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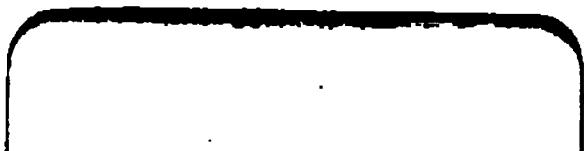
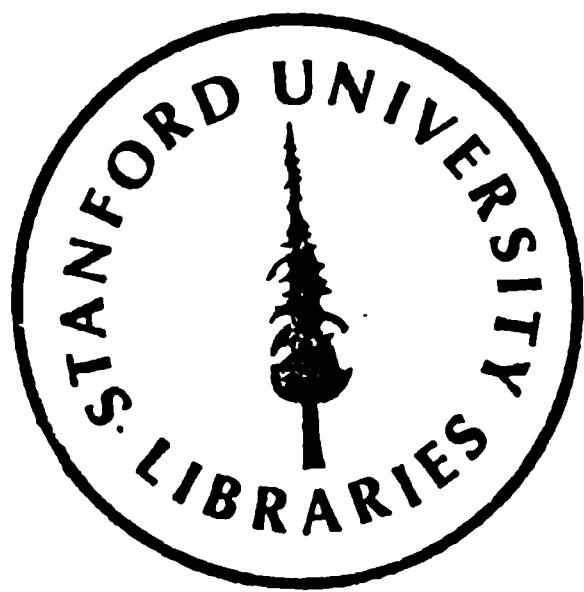
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PRISONS
POLICE
AND
PUNISHMENT
EDWARD
CARPENTER





**PRISONS
POLICE AND
PUNISHMENT**

PRISONS POLICE AND PUNISHMENT

AN INQUIRY INTO THE CAUSES
AND TREATMENT OF CRIME
AND CRIMINALS

By

EDWARD CARPENTER

Author of "Towards Democracy" "Civilisation,
its Cause and Cure" etc.

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Preface

THE last Prison Blue Book (the Report of the Commissioners of Prisons and the Directors of Convict Prisons for 1903-4), while it shows an appreciable advance and improvement in the management of our penal establishments, reveals also how very much there is still waiting to be done. Officialism, as we know, is sadly slow to move; and we are yet a long way from getting at the root of all this matter, namely, the transformation of the Criminal into a useful citizen, and the extinction of Recidivism. Penology, though made much of as a science on the Continent and in the United States, is little studied in Britain; and there is little doubt that in some respects even Russian and Siberian prisons are more humanely conducted than ours.

The following chapters are a small contribution to the subject. It is easy to see, for any one who looks into the heart of the people to-day in our islands, that deliberate criminality and perversely anti-social instinct, though of course present, are not so very widespread. The immense majority of cases that pass through our courts are cases arising out of sheer need, or wretched education and surroundings, and would disappear with the establishment of decent social conditions. But at present, as the worker, whether in town or country, is unable to secure employment and the means of honest living except by favour of another man—as society gives him no *right* to employment and to work for a living—what wonder that he

endeavours to secure a living by means to which in the eye of society he has no right?

Changes no doubt are coming, and better social conditions. Meanwhile, however, it is necessary that our treatment of the Criminal should be an aid to progress, and not an obstruction—as it so often is to-day. Mr. Charlton T. Lewis, President of the National Prison Association of the United States, has said that “to consign a man to prison is commonly to enrol him in the criminal class” (*see Appendix C*). But surely, if we are to have prisons at all, their action and result ought to be just the opposite.

I have ventured to indicate in the first few chapters of this little book some of the reforms in Prison management and Criminal procedure which are most needed, and which might at once be pressed forward; and in the Note at the end of Chapter IV I have made a list of these. Coincident changes must no doubt also take place in our Police-system, and to these I have alluded in Chapter V. Finally, since there is a growing feeling on all hands, especially among advanced officials and criminologists, that prisons and punishment are in their present form outworn, and productive of as much harm as good, I have endeavoured (in Chapter VI) to sketch a state of affairs in which the whole system of government by violence will lapse and become antiquated, leaving society free to shape itself by voluntary methods according to its own good sense: feeling assured that if society *has* good sense it will be able to shape itself in this way, and if it has not there does not appear much likelihood at present of its rulers being able to supply the deficiency.

January, 1905.

E. C.

Contents

CHAP.	PAGE
I PENAL SYSTEMS, PAST AND PRESENT	9
II LAW AND PUNISHMENT	27
III THE SOURCES OF CRIME	45
IV PRISON REFORM	64
V THE POLICE SYSTEM	80
VI NON-GOVERNMENTAL SOCIETY	90

APPENDIX—

A The Solitary System	115
B The Indeterminate Sentence	131
C The Probation System	133
D Corporal Punishment	137
E Capital Punishment	141
F The Treatment of Unconvicted Prisoners	147
G A Court of Criminal Appeal	151

*I know not whether Laws be right,
Or whether Laws be wrong ;
All that we know who lie in gaol
Is that the wall is strong,
And that each day is like a year,
A year whose days are long.*

*But this I know, that every Law
That men have made for Man,
Since first Man took his brother's life,
And the sad world began,
But straws the wheat and saves the chaff
With a most evil fan.*

*This too I know—and wise it were
If each could know the same—
That every prison that men build
Is built with bricks of shame,
And bound with bars lest Christ should see
How men their brothers maim.*

—*Ballad of Reading Gaol.*

PRISONS, POLICE AND PUNISHMENT

I

PENAL SYSTEMS, PAST AND PRESENT¹

THE penal systems of all countries probably pass through much the same stages of evolution. They begin with Revenge—"an eye for an eye, and a tooth for a tooth"; they pass on to the idea of Punishment—a semi-theological conception, a sort of sacrifice to the goddess of Justice; then they adopt the method of Deterrence or Terrorism—society itself stricken with fear, trying to stamp out criminality by fear; and only at the last, if at all, do they become human. Only at the last does the majesty of society, forgetting its own little fears, descend to the work of Reclamation, and to make the criminal once more into a fellow-citizen and a brother.

Our public opinion happily is rapidly passing into this last stage; but our penal system itself lingers in the stages of Terrorism and Punishment. It may be necessary to say a few words on these stages.

¹ Given originally as an address.

10 PRISONS, POLICE AND PUNISHMENT

And first on the subject of Punishment. We need not discuss the theory or abstract meaning of this term. It is sufficient to point out that public opinion is rapidly coming to see the incongruity and even absurdity of its actual application in the courts. The country squire or J.P. who, in his own person or in that of his forbears, has filched a common from the villagers, *punishes* with lofty sense of justice the farm-labourer who appropriates a goose ;

The law condemns the man or woman
Who steals the goose from off the common ;
But leaves the greater felon loose
Who steals the common from the goose.

The judge whose moral relations are notoriously unsatisfactory is virtuously severe over some youth who has been carried away by his passions, and sentences him to a year or two of hard labour. Such situations are common enough. It is clear indeed that human nature renders them unavoidable as long as our present legal system continues ; but their incongruity is becoming every day more patent.

Of course it may be said, and is said, that the administrator of the law does not punish in his own name, but in that of society. He acts not as an erring individual, but as the arm of the corporate body. That is why he wears the scarlet and ermine. But then, what is society that *it* should punish a man ? What does the great Institution of Law, for all its rules and precedents and agelong experience, know of the temptations, the struggles, the exasperations, of the individual criminal—of the human soul within him—that it should sentence and condemn ? What

PENAL SYSTEMS, PAST AND PRESENT II

is the Institution that it should clothe itself in the garment of Righteousness and Judgment?

Here is a man who murdered his wife the other day. What a generous, affectionate fellow he was, dark, and with a brow just for the moment like thunder when vexed, but so really gentle; and devoted to his children. His wife a perfect shrew, her digestion all wrong. She tore at him with her tongue, aiming always at galled and weak places. One day, transported with anger, he struck her a heavy blow. She reeled and fell, and never spoke again. He, transfixed with grief, also hardly spoke again. The judge put on the black cap. (It was the idea of Righteousness and Punishment that the judge had in his mind.) The neighbours remonstrated—a petition was got up—a hundred signatures—quite a number for a working man's friends; but it was so much waste paper—the man was hanged without mercy.¹

¹ Take, for instance, the following case from the daily papers of August 10, 1897: "Thomas Lloyd, who has been lying in Walton Gaol, Liverpool, under sentence of death for the murder of his wife, was executed yesterday morning. Reporters were not admitted to the execution, but an eye-witness of the execution stated that Lloyd walked calmly and firmly towards the scaffold. When he came in sight of it, however, he turned ashy pale, and for a moment seemed to be paralyzed with grief. He stopped and gave a great sob, but in a moment recovered and said, 'I am ready,' and resumed his walk to the scaffold. Billington, the executioner, gave Lloyd a drop of six feet, and death, it is stated, was instantaneous. Application for a reprieve had been made to the Home Secretary on the ground of the great provocation which Lloyd received, but Sir Matthew White Ridley declined to interfere with the sentence. It transpired at the trial

12 PRISONS, POLICE AND PUNISHMENT

It is this idea of Punishment, and the obvious impossibility of awarding punishment in any rational way, which makes judges and magistrates so hopelessly at sea over their sentences. What is the proper punishment for murdering your wife? or what is the proper punishment for forging a cheque of £100? Say, what is it? One judge tries long sentences, another tries short sentences; another gives a heavy sentence on one occasion, and a light sentence for the same offence on another occasion—just to make things equal in that way. But no one has any reasonable system; for obviously there is no such thing, nor can be.

Does it follow from all this that society must leave offenders alone? Not at all. It is clear that society *will*, and indeed must protect itself, against those whom it considers injurious to itself. Nor is it easy to give a reason why it should not do so, since self-preservation is the first law of nature. But there is a great difference between society protecting *itself*, and society punishing the *criminal*. The whole attitude is different.

Thus we come to the next stage—that of Deterrence. Criminals must be deterred. They must be terrorized, so that those who have come to prison once, won't come again, and others will not come at all—and society will thus be safe from its own wild

that Lloyd's married life was most unhappy, the murdered woman being of very bad temper and aggravating disposition. Among those most anxious to obtain Lloyd's reprieve was a stepson, who in a statement said that the condemned man was a good husband, and was, in fact, as good as gold."

children! This is a less theological and more positive stage.

It would not do to say that Deterrence is of no use. That would be too strong a statement. It is probable that Fear—the fear of the gallows, fear of the lash, fear of the prison, or of the social stigma it brings with it—keeps a certain number of people back from crime. But not so very many. In most cases, it only makes them more careful about being found out.

It is remarkable indeed to find how little effect is attributed to Severity by some who have studied this subject. The Rev. W. D. Morrison, who as Prison Chaplain has had a large experience, says:—“John Bright once said—Force is no remedy, and as far as the criminal population is concerned, this remark is literally true. Force, in the shape of punishment, no matter how severe you make it, will not keep down crime. If the penal laws of the past teach us anything, they teach us that crime cannot be put down by mere severity.”¹

Allowing however that a certain percentage are actually deterred from breaking the laws by fear—we have to remember what an *unworthy* motive this is. Fear may make a man conform to the respectabilities, but it never yet made a good citizen. It may be necessary to make use of fear sometimes, but it must be remembered that it is the lowest and least desirable motive that can be set in operation. The causes of crime go deeper even than Fear can touch, and till we reach them we are not very far on our way.

¹ *Humane Science Lectures* (George Bell), p. 87.

14 PRISONS, POLICE AND PUNISHMENT

Every one has read of the Vagabondage in Elizabethan times, and the frightful penalties, the brandings, floggings, hangings that were vainly put in force against it. We are amazed now to think that authorities could have believed that these things would have any effect—when the economic causes that produced those tribes of houseless tramps—the alterations in the tenure of land, the dissolution of the Monasteries, and of the Towns' Guilds, etc., are so clear to us. Yet to-day we still believe in the hocus-pocus of floggings, hangings, and imprisonments—though the economic causes of nine-tenths of our crime are equally patent to anyone who will take the trouble to look into them. "Crime," says Mr. Morrison again, "springs from disorders in our social system, and until these disorders are healed or alleviated, crime will continue to flourish in our midst, no matter how severe and strong you may make the penal law. Some of these disorders consist of physical or mental infirmities; some of economic hardships and vicissitudes; and some in the low standards of life and conduct which prevail in our midst. The true method of diminishing crime is to pluck it up by the roots. And the only way to pluck it up by the roots is to alleviate the social disorders by which it is produced."

With regard to our own system, into which Deterrence enters so largely, we are beginning to recognize its failure. If the fear of penalties deters a certain number who have never been in prison, how does it act on those who *have* been there? *Recidivism* is the answer—they come back again. The Report of 1895 quotes figures which show conclusively that the

more often a man has been in prison, the more *likely* he is to return there. Of every hundred who go to prison a first time, thirty return again ; but of every hundred who have been to prison five times, seventy-nine return again.¹ This does not look as if existing prison methods were largely curative. In fact, our system does not create citizens, but rather habitual criminals. It lays itself out to terrorize rather than to reclaim, and this is the result.

For habit robs even prisons of their terror. However severe a system may be it at last *breeds* its own type of prisoner who is adapted to his environment. If you live seven years without speaking or using your brain and heart to any appreciable degree, you at last lose the *need* for speech and thought and affection. The privation is no longer a punishment. Not long ago there was in Sheffield a man who had been forty-two years in prison. He had been convicted of some violence in the early days of Trade-unions. He was now sixty-three—a tall, gaunt, and still powerful man, with the broad arrow marked on the back of his hands (a practice forty years ago). He had come back to the world, but he had no interest in it. He seemed utterly callous. Though he had been a trade-union enthusiast in his time, he took no interest whatever in the labour struggles of to-day, or in anything else that was going on. Yet he openly said that if anyone wanted a "rough job" doing, he would do it. Then he would get back to prison—and he would as soon be there as anywhere else. That man was completely adapted to his

¹ See for further figures chapter on *Prison Reform, infra*, p. 68.

16 PRISONS, POLICE AND PUNISHMENT

prison-environment. He was the perfected result of prison influences during the last forty or fifty years.

Things are improving doubtless ; but it is obvious that a system which is merely or mainly one of Deterrence must turn out such types. "Will a prolonged course of severities and degradations," says Morrison "confer the virtues of industrious and orderly citizens on these unhappy men ? On the contrary, the more harshly you punish them, the more you reduce the human element which still lives in their hearts. The more you punish them, the more certainly you doom them to the awful existence of a habitual criminal."

It is the habitual criminal who is the bugbear of our modern civilisation, and notwithstanding our systematic starvation of both his body and his mind his proportions remain as alarming as ever ! Michael Davitt, in an excellent letter to the *Daily Chronicle* at the time of the shooting of the escaping convict Carter, said : "All such reasoning and arguments [in the direction of Reclamation and humanity], are I know, thrown away upon those who believe only in the efficacy of the stern and undeviating practice of intimidation towards those criminals who have forfeited to the law for a time the ordinary claims and considerations of citizenship. Advocates of more humanizing methods of prison discipline are but the votaries of a misplaced sentimentality with such critics, and this closes the case in favour of the existing system of punishing malefactors. But the case is by no means closed in this off-hand way. There are other sides to the question, the most serious

side being the steady growth of recidivists under the fostering influence of a purely intimidatory and non-reformative prison law and administration. All the sneers in the armoury of official criticism at meddlesome reformers cannot dispose of this damning evidence against the failure of the existing system to reform the criminal.

"The reason of this failure is not far to seek. All individuality is mercilessly suppressed in the prisoner. No prisoner is allowed to do anything except with the permission and in sight of a warder. He is the object of constant and ceaseless vigilance from sentence to liberation. He is closely watched when at prayers in chapel. He is under the warder's eye while in his cell, and is never for a second lost sight of while at work. He is made to feel in every particular of his routine life of silence and labour that he is treated, not as a man, but as a mere disciplined human automaton. To possess a will or to attempt to exercise it even in some praiseworthy or harmless manner—as, for instance, to share a piece of bread with a more hungry fellow-unfortunate—is to commit a breach of the prison rules. The human will must be left outside of the prison gates, where it is to be picked up again five, seven or fifteen years afterwards, and refitted to the mental conditions which penal servitude has created in the animalized machine which is discharged from custody. All initiative has been enervated under a remorseless discipline, and a man weak in mental and moral balance at best is turned out into a cold, repelling and pitiless world, crippled in all those qualities of self-reliance which are the essential needs of a

18 PRISONS, POLICE AND PUNISHMENT

creature destitute of friends, and liable to be a prey to the ticket-of-leave hunters of the law. The system which reduces a man to a condition of moral helplessness of this kind may be scientific, 'just,' punitive, and all the rest ; but it is not, and cannot possibly be, reformatory, any more than it can be merciful, Christian, or considerate.

" It is not in the nature of things human to expect sentient, reflective beings, no matter how degraded by crime, to be cured of their moral maladies through the media of inhuman submission, or to be deeply impressed with respect for a law which penalizes almost every natural faculty in a prisoner in retaliation for his offence against society. Working on such lines, on the lines of greatest resistance, it is no wonder that penal servitude is a fruitful nursery of recidivism and a patent instance of expensive failure."

Sir Godfrey Lushington lends the weight of his authority to the same views. He says (as quoted by the Report of 1895), " I regard as unfavourable to reformation the status of a prisoner throughout his whole career ; the crushing of self-respect, the starving of all moral instinct he may possess, the absence of *all* opportunity to do or receive a kindness, the continual association with none but criminals, and that only as a separate item amongst other items also separate ; the forced labour, and the denial of all liberty. I believe the true mode of reforming a man or restoring him to society is exactly in the opposite direction of all these ; but of course this is a mere idea."

It is now of course thoroughly understood and re-

cognised by the more advanced sections that Reclamation of the criminal is not by any means only "a mere idea," but that it is the one sensible method to be pursued. It is the most economical, since it saves the cost of the habitual criminal ; it is the most social, since it produces a self-supporting citizen ; it is the most reasonable, since the effort of society to *punish* the product of its own ill-doing lands us in all sorts of absurdities ; and it is effective because the compulsion to lead an orderly and industrious life is as much dreaded by the average criminal as any treadmill or other useless severity. Some people are ready to doubt whether reclamation is always possible. That would hardly be a reason against trying it. But it is satisfactory to find that the last Commission think that it need seldom fail. "There are but few prisoners—other than those who are in a hopeless state through physical or mental deficiencies—who are irreclaimable." The advanced opinion of practically all civilized countries is in this direction ; but the ancient and abiding difficulty, especially in Great Britain, is to get officialdom to move.

The experiments carried on at the Reformatory of Elmira, in the State of New York, have yielded remarkable results. The system adopted there in 1885 and succeeding years was an extension of that proposed by Sir J. Graham in 1842. The prisoners were put through courses of lectures, gymnastic exercises, baths, industrial work, music—everything in the positive direction, to evoke the germs of bodily and mental health, and to train them in habits of good citizenship. At the same

20 PRISONS, POLICE AND PUNISHMENT

time a certain stringency and discipline were of course used. During the thirteen years from the opening of the Reformatory to the end of 1889, nearly 4,000 prisoners were received at Elmira. Care was taken on their release to find them suitable situations, and few, if any, returned.

Such is the admirable inconsistency of man ! Make your prison horrible with soul-crushing severities, and your prisoners will revisit it year after year. Make it decent and home-like, and full of help and instruction, and they will take care never to come near it again.

As a rule the American prisons (it is said) are badly managed ; but the example of Elmira appears to be spreading. "In Ohio, for instance," says Havelock Ellis,¹ "youthful criminals are being brought up on the broad basis of manual training, and among the branches of industry taught are farming, fruit-growing, carpentry, shoe-making, painting, tailoring, baking, laundering, housework, vocal and band music, telegraphy and printing."

Mr. H. Norman, in his description of the prison at Tokyo, in Japan, says that the prisoners there are put to the highest class of industrial work which their faculties will allow. "If the prisoner can make *cloisonné* (artistic inlaid metal-work), well and good ; if not, perhaps he can carve wood or make pottery ; if not these, then he can make fans or umbrellas or basket-work ; if he is not up to any of these, then he can make paper, or set type, or cast brass, or do carpentering ; if the limit is still too high for him, down he goes to the rice mill, and

¹ *The Criminal*, third edition, 1901, p. 337.

see-saws all day long upon a balanced beam, first raising the stone-weighted end, and then letting it down with a great flop into a mortar of rice. But if he cannot accomplish even this poor task regularly, he is given a hammer and left to break stones under a shed with the *twenty-nine* other men out of 2,000 who could not learn anything else." There was one punishment cell, Mr. Norman explains, in the prison ; but the official said it had not been used for a month.

The Russian convict-system is generally regarded in England as exceedingly barbarous—and no doubt is so in some respects ; yet Mr. H. de Windt and Dr. Benjamin Howard both hold it up as superior to ours. In the island of Saghalien, says Dr. Howard, the convict, after a short term of imprisonment, is settled out on a cottage with land attached. "A political or a murderer in Saghalien lives with his family in a well-built and often pretty four-roomed cottage, with its vestibule and garden." The island is populated by such persons, "who work peacefully and quietly on their farms, and walk about the streets to all appearances free men." And Kropotkin says : "Eastern Siberia is full of liberated assassins ; nevertheless, there is hardly another country where you could travel and stay with greater security."¹ Dr. Howard further remarks, speaking of Saghalien : "Convict labour has added to the Russian empire an island the length of

¹ Much the same is the case in the Andaman Islands, which is the convict-settlement for British India. Here you may often see a man who has been convicted of murder, acting as nurse in the employ of some British resident, and trundling a perambulator along the promenade of Port Blair.

22 PRISONS, POLICE AND PUNISHMENT

England, not an acre of which was previously under cultivation." And he continues : "The main lesson to be drawn from this system is the absolute futility of punishment for its sake alone. The first principle taught is that of self-maintenance. Convict labour should be productive of a net profit to the State, so that instead (as in England, for instance) of costing many millions, it should prove a source of annual revenue by putting in force organized forms of industry suited to the capacity of the respective criminals. By the means employed in Siberia the convicts do not lose all self-respect, and are often better fitted than before to become useful members of society. In the English and some other prison systems the outcome is generally the opposite. The result of the convict's incarceration, and of the useless forms of labour on which he has been employed has often been merely to generate a vengeful feeling, which tends to render him an habitual criminal."

"A criminal is a man," says "Reformer" in an article in *Humanity* (Nov., 1896), "and he should be treated as a man. Treat him like a brute, and he will become a brute. Hard work, coarse fare, and certain restrictions on his freedom do not interfere with his manhood, but restrictions on his freedom should not be carried further than is necessary. His work should be of a kind calculated to assist him in earning his bread after he obtains his discharge, and care should be taken not to break down his bodily or mental powers so as to incapacitate him from doing so. Any criminal who desires to improve his education or his mind generally should be given every facility for doing so that does not interfere

with his work, and I do not think a life sentence ought in any instance to be permitted. If such a sentence is intended to be equivalent to an assignable term of years, why not assign that term of years in the first instance? Hope is one of the greatest incentives to good conduct and improvement. No prisoner should ever be deprived of it, unless the sentence is death : and death by penal servitude is much worse than death by hanging." And death by hanging (we may say in passing) or by any other form of execution, is a monstrosity, and cannot be tolerated much longer in any civilized country."¹

The conclusion of it all appears to be that the idea of Punishment (since no legal institution can possibly judge of moral guilt) is rapidly becoming untenable ; and further that the method of Deterrence as the main preventive of Crime has been found sorely wanting. There remains the obvious right (and undeniable might) of society to detain in custody any person whom it considers dangerous or harmful to itself ; and its obvious duty (and undeniable interest) to transform that person as soon as possible into a useful and friendly citizen. Further than this the public opinion of the future will hardly go—in the direction of interference with individual liberty. So long as society protects itself, and does its best to reclaim the criminal, the question of punishment or vengeance, or retribution in suffering for suffering wantonly caused, must be left to the deeper powers which lurk in Destiny and the human Soul itself.

The industrial tendency of social evolution to-day

¹ See Appendix E.

24 PRISONS, POLICE AND PUNISHMENT

points conclusively to the transformation of our Prisons into industrial centres—a transformation which is already beginning to take place ; and the Commission of 1895 recommends the “practice of association for industrial work”—that is, that prisoners should learn to work together for common ends ; a wise suggestion—but as yet, only beginning to be followed.¹

Yet if in Japan a graduated system of prison industries can be organized—how much easier to organize the same in industrial England ! Our large prisons would lend themselves to such a subdivision. The few violent and refractory prisoners would be put to work of a rougher character, such as would not bring them into too close association with each other, and which would allow of their being efficiently overlooked ; and in proportion as prisoners showed themselves more capable and trustworthy they could be placed in or transferred to finer and more sociable classes of work.² For short term prisoners, there would have to be simple trades which almost any one could follow. Classes for mental instruction and study, and for bodily drill, would fill up most of the spare time. Nor should the influence of music be forgotten—for which the criminal has so often a special feeling. As Dr. Wey, of Elmira, remarks : “Education means occupation, either mental or physical. The time

¹ Associated work is now (1904) being gradually introduced among women-prisoners and juveniles. See chapter iv., *infra*.

² The classification of prisoners which is now being adopted would lend itself to the above purpose.

of the convict should be so employed in his shop-work and school-duties as to leave him no leisure moments in which to revive the past, and live over again in memory his criminal days, or plan for the future ; but each hour should bring to him its employments and engross his attention till the time for sleep." And, we may add, the occupation should always be of such a character as to evoke as far as possible the dormant social instinct of the criminal.

Such a system would bring with it another change —the making of the sentences, within certain limits, *indeterminate*. That is, the purpose of imprisonment being the reform of the criminal, there would be no object in detaining him after that reform had been effected. The decision of the length of the sentence would therefore be to some extent transferred from the judge to the governor and committee of the prison. Probably it would be felt that it would not do to give these authorities power to *prolong* the sentence beyond the maximum adjudged by law to the offence ; but within this maximum it would give them a free hand. As a matter of fact this indefinite sentence system is already in operation. It has been adopted by the State of New York in the case of Elmira¹ ; and by several other American States, such as Massachusetts, Ohio, Pennsylvania, and Kansas² ; and is recognized as the principle of the future by many leading criminologists. Of course the change would involve a much more educated and trained staff for our gaols, in the way

¹ Also it has now (1904) come into operation, I believe, in England, at the juvenile-adult prison at Borstal.

² See Appendix B.

26 PRISONS, POLICE AND PUNISHMENT

of governor and committee, than exists at present—but then many other things point to that as a necessity.

The industrializing of our prisons is clearly only a part of the general process which is going on towards the socializing of industry and the enabling of every citizen to obtain work of a useful character. While for the normal citizen such work will, of course, be voluntary, it may be necessary for some time yet, and for certain classes, to have, in Workhouse and Prison, centres of compulsory industry. It is difficult to suppose that petty considerations of the private interests of a few manufacturers, or petty considerations of national expense (which would be amply repaid), or the mere routine impediments of conservatism and officialdom, can defer these greatly needed changes much longer.

LAW AND PUNISHMENT

THE inhumanities and absurdities of Law have been in the past, and are to-day, so monstrous, so patent to everybody, that to refer to them is to risk a commonplace. As Mr. Darrow, the well-known American lawyer, says in a chapter on the *Theory of Crime and Punishment* : " All conceivable human actions have fallen under the disfavour of the law and found their place in penal codes : blasphemy, witchcraft, heresy, insanity, idiocy, methods of eating and drinking, the manner of worshipping the Supreme Being, the observance of fast days and holy days, the giving of medicine and the withholding of medicine, the relation of the sexes, the right to labour and not to labour, the method of acquiring and dispensing property, its purchase and sale, the forms of dress and manner of deportment, in fact almost every conceivable act of man. On the other hand, murder, robbery, pillage, rapine, have often been commended by the ruling powers, not only permitted, but under certain conditions that seemed to work to the advantage of the ruler, this conduct has been deemed worthy of the greatest praise. The punishment for illegal acts has been as various as the crimes.

28 PRISONS, POLICE AND PUNISHMENT

Death has always been a favourite visitation for the criminal ; but the means of death have varied both with time and place : boiling in oil, boiling in water, burning at the stake, breaking on the wheel, strangulation, poison, feeding to wild beasts, beheading, and in fact every conceivable way down to the humane (?) method of electrocution and hanging by the neck until dead. . . . After death has come public flogging, standing in the stocks, ducking, maiming, and so forth. No two sets of rulers have ever agreed on the relative enormity of the various crimes, the sort of punishment they merited, the extent and duration of the punishment, or the purpose to be accomplished by the punishment. One age has pronounced martyrs and worshipped as saints the criminals that another age has put to death. One law-making body repeals the crimes that another creates. Some judges with venerable wigs have pronounced solemn sentence of death upon helpless defenceless old women for bewitching a cat. Grave judges have even sentenced animals to death after due and impartial trial for crime."

It is pleasant certainly to reflect upon the mistakes of the past if one can boast a present improvement. But can we do so ? The cruelty of our cellular and separate prison-system, though now somewhat diminished, has been in its refined and subtle way almost as bad as the barbarities which it replaced ; the confusion still reigning and the utter uncertainty as to the nature of crime and the object of punishment are as great as ever. Wretched girls driven by despair and the pointed finger of society, to drown their own babes (and if possible

themselves)—girls who must have gone through the greatest agony of mind before they could bring themselves to this pass—are calmly sentenced to death as if they were malefactors of the deepest dye. Workmen, hounded by famine and hopeless of employment, who in a moment of madness have murdered their own wife and children, are deliberately hanged. Would-be suicides are fished out from canals to receive legal sentence—not much otherwise than when actual corpses (as in the corpse-trials of the Middle Ages¹ and the Inquisition) were placed in the dock before their judges.

Only last year (1904) a young man, named Cooper, was arrested on a charge of cutting his sweetheart's throat, and then his own. The girl died. He was convicted of murder, though the evidence against him was only weak, and condemned to death; but owing to the state of his throat the execution was delayed. Later on, however, two doctors from the Home Office certified that the neck was *sufficiently healed*, and that he could safely be hanged!²

That judges can be found to pass sentence of death in so many cases where obviously nothing but the greatest misery and suffering could have compelled

¹ About the end of the ninth century the body of Pope Formosus was deliberately disinterred and "tried" before his enemy, Pope Stephen VI (see Bower, *Hist. of the Popes*, 1761, vol. v.); and similar proceedings were frequent in the courts of the Inquisition.

² Finally, in this case the sentence was commuted; but similar cases have occurred in which the sentence was actually carried out, and in one such the wound opened and bled as the victim was "dropped."

30 PRISONS, POLICE AND PUNISHMENT

the prisoner to commit the act in question, is indeed surprising. But long habit doubtless hardens and makes them insensible to the meaning of the sentences they pass ; and the law is so full of monstrous anomalies that to the mind entangled in it the words right and wrong lose all human significance.

Cases got up by zealous police constables remain only "cases," to be proved if possible at all costs. One officer corroborates another in evidence, anxious to receive a similar support in some other affair in which he is interested ; magistrates and judges prefer the apparent simplicity of well-prepared evidence to the strange and baffling complexity of actual facts ; sentence once passed, they become as men deaf and blind. As to the follies of the Law, which must be so well known to the profession in all its grades, it seems astonishing that judges and justices, barristers and K.C.'s, or some combination or corporation of these, so seldom, if ever, make a note or suggestion to the nation of such improvements or amendments as they would incline to advise ; but, on the contrary, wiping their minds of all sense of responsibility, and one may almost say of all sense of humour, continue solemnly to insist on and to administer statutes and enactments which are in ludicrous conflict not only with each other, but with all common sense.

Some hundreds of times must a Jane Cakebread be brought up for drunkenness and sent for a week or a month to prison, before any suggestion is made of a different procedure, even though every one knows well that prison is perfectly useless in

such a case. Here is a tramp whose only diet for days has been the oats he has filched from horses' nosebags ! Once more he is had up for sleeping under a garden wall, and solemnly warned that if he cannot pay for a shelter he must go to the casual ward or else to prison,¹ and all the time it is a matter of common knowledge that the casual ward is made as intolerable and revolting as possible just in order to keep such as him out, and that any one with a spark of manhood in him would refuse its insulting hospitality. Here is an old woman who, long unable to get employment, has stolen a pair of boots or a loaf of bread, and is sent for three months, and yet it is obvious to every one that there is absolutely no other course open to her—even begging being forbidden. Society, refusing to find employment for its members, or even to assist them in the search for honourable work, leaves to vast numbers simply the choice between starvation and theft² (by fraud or violence), and when they inevitably choose the latter, goes through the inhuman farce of committing them to gaols, where their sense of injustice will be increased, and their adoption of "criminality" confirmed.

¹ At Chorley, in Lancashire, a tramp was lately sent to gaol for fourteen days for sleeping in a shed "without visible means of subsistence." At Keighley the same. At Bridgwater an old man of sixty-eight, *one month* for the same offence.

² Addressing the grand jury at the Surrey Assizes, Mr. Justice Bigham said he was delighted to find so little crime in the county. His experience was that crime to a large extent was the outcome of misery, and the absence of crime, therefore, was a sign of good work and contentment.—(*Daily News*, Dec. 8, 1904).

32 PRISONS, POLICE AND PUNISHMENT

On the other hand, to those who have visible means of subsistence, and are not driven to fraud by starvation, the Law is extraordinarily lenient. The shop-lifting "lady" is a "kleptomaniac." Gambling in "futures" is a fine and honourable profession, but pitch and toss is subject to the policeman. Wealthy criminals are generally well received by society, and if they come under arrest are mildly treated; the small ones know all the bitterness of floor-scrubbing and skilly. Society, founded from head to foot on the property-system, necessarily pays homage to those who have the property (however they may have got it). The great mass of the Laws—passed by the propertied classes—exists in order to maintain the property system, and the *status quo*. A very large proportion of all crime—so jurists say—arises out of the struggle for property.¹ But those who are successful in that struggle—the rich—have practically passed beyond reach. They have no need to violate their self-made law, and within its limits they can steal from the poor with perfect impunity; while, even if they do transgress, their riches supply them with a thousand means of evasion.²

¹ Taking the return for 1903-4 of all prisoners convicted at Assizes and Quarter Sessions in England and Wales, I find that about five-sixths of the convictions were for offences committed in the endeavour to obtain property. I find also in the Report of the Departmental Committee for 1895 these words: "Larceny, embezzlement, and receiving stolen goods constitute five-sixths of the total of crime."

² "That these property laws are purely arbitrary is shown by the slightest thought. The criminal statutes

Against the millionaire, the big brewer, banker, railroad magnate, cotton-gambler, wheat-speculator ; against the South African diamond king, the Johannesburg gold-bug, the big American dealer in trusts and corners, with their command of all the resources of civilization, with their private detectives and secret agents, their motor-cars and Marconi apparatus, their powers of bribery or intimidation, their control of the Press, and their sway in Legislative Houses and Governments ; against these the poor old Law, with its obsolete methods and antiquated appliances, with its wigs and its parchments, and its turnkeys and treadmills, is utterly useless. And so we have the sufficiently comic spectacle of the web of legality broken, brazenly broken, in every direction by the big fish, while lawyers and judges, with such rags and remnants of the net as are left in their hands, are seen—with excessive zeal, and as if to justify their own existence—busily occupied in catching all the small fry that they can !

forbid extortion and swindling, and yet the largest part of business is extortion, and much of the balance is swindling. When the law forbids extortion and swindling, it simply forbids *certain forms and methods* of these acts, and these forms and methods are the ones not practised by the ruling class. They are so small and insignificant as not to constitute business, but only petty annoyance to the ruling class. To go directly to a victim, and by threats of violence compel him to pay more for some commodity than it is really worth is generally extortion ; but this is a very clumsy and infrequent act. Real extortion is taking for any service more than it is fairly worth by means of agencies created by the extorter to despoil his victim—and this is the business of the business-world " (Resist not Evil, p. 147).

34 PRISONS, POLICE AND PUNISHMENT

That before the modern rich man the apparatus of Law, for good or for evil, is going down like jungle grass before the hippopotamus is evident to everybody, and it is only by an excess of hypocrisy and wilful shutting of our eyes that we can at the same time reconcile ourselves to the wholesale conviction and imprisonment of the wretched waifs and strays who, absolutely pinned by necessity and our social conditions, perpetrate in tiny miniature the thefts and frauds for which their brothers in high places are greatly glorified.

But if on the subject of Property the general attitude and procedure of the Law is unsatisfactory, this applies also to its treatment of Marriage, which, of course, is a matter much entangled with property. While social opinion and moral feeling ought to lend the greatest sanctity to true Marriage and to the dedication of two to each other, it is impossible to say that the Law does this. On the contrary, it enslaves Marriage to Property and to its own legal formalities. A union once registered—however ill-fitting and hateful it may turn out—is registered for life, and the Law, which has itself tied the knot, stares stupefied at its own work, completely unable to undo it! On only one condition may a divorce be secured, the condition that one party shall act with criminal infidelity (and cruelty) towards the other. And this means that in case of an ill-assorted union the Law encourages and allows what it calls crime as the only way out of the tangle! And if by any chance two honest people, unfitly united and clearly recognizing their mistake, *refuse* to act in a criminal way, or

anyhow to deceive or be unfair to each other, then the Law absolutely and utterly declines to grant them their release. Can the force of folly, it may well be asked, go further than this? As to the enslavement of Marriage to Property, it is plainly seen in the farcicalities of Breach of Promise, in actions for the Restitution of Conjugal Rights, and in the whole practice of elaborate Settlements and Trusteeships. In all these cases it is clearly not the real union or fidelity of two persons to one another that is considered, but the various property interests that may be concerned, and the same Law which an hour ago has condemned the brothel-keeper to a serious term of imprisonment is now itself acting a like part, and encouraging, nay compelling, folk to sexual intimacy on the sole ground of pecuniary profits and rights.

Finally, to complete the tale of inconsistency, while it is generally said that the protection of the children is one of the main objects and excuses of the Law in regulating Marriage, this is really a matter that it little cares about, as is seen in the case of illegitimate offspring. Here the penalty of the wrong doing, instead of being visited on those most concerned, is made to fall on the unfortunate innocents who have no part in the offence, and are left without claim upon their parents, or status in the world, simply because the Law in its anxiety to associate the rights of property with the legal marriage has forgotten the children born out of wedlock, or frankly not troubled itself to regard them.¹

¹ We may also mention here the way in which the responsibility of the father is overlooked in those frequent cases where a girl deserts or makes away with her child.

36 PRISONS, POLICE AND PUNISHMENT

In all the above, as the reader will see, I have not gone out of my way to select unusual instances, but have taken the most ordinary and everyday cases, and it cannot but grow upon us, as we go on, that the failures, the incongruities, absurdities and inefficiencies of our legal institutions are so great that unless a vast and unforeseen change occurs, the whole apparatus is in danger of falling into great contempt.

I have spoken of the Law in relation to Property and to Marriage. As regards acts of Violence (which, of course, often spring from Property-roots), its only reply is a greater Violence. The Law with its courts and constables, its police and military behind them, its prisons, scaffolds, whipping blocks, is an immense apparatus of Violence. Just as the poor and those only able to commit small and unimportant acts of theft are overwhelmed by property in high places and property-made law; so the weak and those who commit comparatively trifling acts of violence are overwhelmed by an enormous organization of Violence, which because it is so enormous glorifies in itself the very deeds it condemns in others. Around this organization of violence collects and is distilled a steam and vapour of iniquity—whole armies of detectives and spies, lying, dissembling, cajoling folk with money and drink, instigating others to crime or to perjury¹; regiments of police, anxious, poor fellows,

¹ As, for instance, in the notorious Sheridan cases in Ireland in 1902; or in the so-called Sparkhill birching scandal in 1904, where the Inspector guilty of the unofficial birching exonerated his subordinates for giving false evidence, *because they had been instructed to do so*.

to get themselves credit by any convictions that they can secure ; whole systems of bribery, and blackmail,¹ and evidence obtained at any cost to support an "official" case² ; in the prisons, ignorance, and prejudice, and tyranny ; in the courts, bamboozledom, mental "heads or tails," and hypocrisy pompous and bewigged. All this apparatus we have, antiquated, absurd, lumbering along in the most fatuous way, and in the end quite inadequate and ineffectual.

The violence does not deter. The system creates every day more crime and far more wickedness than it disposes of. The giant apparatus fails to detect or to punish a hundredth part of the so-called criminal actions it is in search of. "Over ten thousand homicides are committed in the United States every year," says Crosby,³ "and probably not ten per cent. of the perpetrators are punished." And in smaller offences the disparity must be far greater.

Personally, I am not a non-resister, like Tolstoy. I do not think that society is saved by non-violence, and I think there *are* cases in which a good hiding may considerably benefit a man. I do not believe

¹ For remarks on the blackmailing of women in the streets by the police, see *The Treatment of the Criminal and the Offender*, an address given by the Medical Officer of Glasgow Prison in 1904.

² See the Adolf Beck case of 1904, or the Edalji case in Staffordshire, and others too numerous to mention. In the Pollard case, 1904, the Solicitor-General alluded to the fact that "manufactured evidence could be procured at 5s. or 10s. a time to swear to almost anything."

³ *Tolstoy as a Schoolmaster*, by E. H. Crosby (Fifield, 1904), p. 79.

38 PRISONS, POLICE AND PUNISHMENT

that society will be saved by the rule of non-violence, nor by any hard and fast rule—*certainly not by the rule of Violence*. But I believe in good sense. This whole apparatus of Law, lumbering along with its cartloads of statute books, and its musty libraries of cases and precedents, and its paraphernalia of torture, and its little mannikins who administer and ordain the whole show, is too ludicrous, too remote from common sense, too alien to the large, free, modern spirit, too like a toy-performance, to be tolerated much longer.

Nor is it merely a question of the absurdity and inadequacy of Law, but also, as I have just hinted, of its absolute wickedness. What does Kropotkin—than whom few men in the world can be more capable of judging—say on this subject? Here are his words (*Paroles d'un Révolté*, p. 242): “They are always telling us of the benefits of the Law, and the wholesome effects of its penalties. But has any one ever really tried to hold the balance between the benefits thus attributed to Law and Punishment, and the degrading effect of the punishment on humanity. Let a man only consider the total mass of evil passions roused among the spectators by the atrocious punishments that used to be inflicted in the public streets. Who indeed has nursed and developed the instincts of cruelty in man (instincts unknown among animals—man having become the cruellest animal on earth) if not the king, the judge and the priest, armed with the Law, and causing men’s flesh to be torn off in rags, burning pitch to be poured in their wounds, their limbs to be dislocated, their bones broken, their bodies sawn asunder,

in order to maintain their authority ? Let any one only try to estimate the torrent of depravity poured abroad in human society by the informer, favoured as he is by judges, and paid in clinking cash by governments, under pretext of aiding to unmask crime. Let a man go within prison walls, and there find out for himself what human beings become when deprived of liberty, and shut in with depraved wretches who have absorbed all the corruption and vice which exude from the very stones of such places, and let him only remember that the more these places are reformed, the more detestable they become, our model and modern penitentiaries being a hundred times more corrupting than the dungeons of the middle ages. Let him consider, finally, what corruption, what degradation of the soul is continually bred in humanity by these notions of *obedience* (the essence of Law), of punishment, of authority (with its right of chastisement and of judgment apart from conscience), by these activities of executioners, jailers, informers ; in brief, by all this immense apparatus of Law and Authority. Let any one consider all this, and he will certainly agree with us when we say that Law and Punishment are abominations which ought to be brought to an end."

That prisons have hitherto been hotbeds of Crime, is a conclusion at which public opinion is rapidly arriving, and this not by any means merely on account of the contaminations of intercourse between prisoners, which indeed were supposed to be avoided by the solitary system, but because the whole tenor, so far, of prison life, the negation of

40 PRISONS, POLICE AND PUNISHMENT

all freedom, independence, opportunity of manhood or mercy, and the solitary system itself—all tend inevitably to harden a man, to throw his thoughts more and more back to self-pity and world-hatred, to paralyze all habits of industry or helpfulness or social use, and to prepare him for a career of crime when he comes out. Mr. Charlton T. Lewis, President of the National Prison Association of the United States for the past twenty years, declared in his address before the National Prison Congress at Louisville in 1903 that "our county jails everywhere are the schools and colleges of crime. In the light of social science it were better for the world if every one of them were destroyed than that this work should be continued"; and again: "Experience shows that the system of imprisonment of minor offenders for short terms is but a gigantic measure for the manufacture of criminals."¹

The prison, as it has hitherto existed, is simply a hardening institution, which inures folk to crime and the criminal life, and deliberately renders them unfit to become decent and useful members of society. It is an epitome of folly and wickedness. In the prison, the State is seen, like an evil stepmother, beating its own children—whom it has reared in poverty and ignorance, and among conditions which must inevitably lead to crime—beating them for its own sins and neglect, and confirming them in their hatred of itself and each other.

¹ *Tolstoy as a Schoolmaster*, p. 72. See also Mrs. Maybrick, who in her book *My Fifteen Lost Years*, says that "prisons the world over produce the very thing they are designed to prevent."

And on the Scaffold and in Capital punishment it completes its programme, and carries the same to the bitter end—murdering its own misbegotten sons and daughters, because forsooth they have murdered someone else. Here finally it abandons all method or hope of Reform, and for the sake of Revenge, or on a vague plea of Deterrence, commits deliberately the very crime which its victim has committed in a moment of anger or of madness. For nine-tenths of the murders for which men are hanged are of this kind.

The man had killed the thing he loved,
And so he had to die.

They are murders committed in a moment of jealousy, of sudden access of revenge, of despair, of self-defence (as in cases of burglary or poaching); they are committed in the fever of the blood, without pre-meditation, and are followed by agonies of remorse and grief. Probably, dreadful as such crimes are, there are none (if we except a few very deliberate and calculating cases) in which the actors are *more* open to reforming influences than in these¹; yet here the State steps in, blind and barbaric, summarily cuts off all hope of amendment, and adds another homicide, cold-blooded and revolting to the last degree, to those which its children must witness. So evil and contaminating has the effect of criminal executions been recognized to be, that while in some countries they have been abolished altogether, in all modern lands nowadays they have ceased to be

¹ See above on the convict-settlements in Saghalien and in the Andaman Islands, p. 21.

42 PRISONS, POLICE AND PUNISHMENT

public, and the representatives of the people admitted have become more and more limited in number ; while we now hear that the officials of Sing-sing Prison petitioned the New York Legislature some years ago " to remove all executions to the little prison of Dannemora, in the Adirondack wilderness, on account of the pernicious effect which such events had upon the prisoners generally."¹

Thus does the Law, hardened in its own customs and usages, and fixed in its belief in the virtue of Violence, continually pour forth its own " torrent of depravity " to add to the evils of the world. And if it seems strange that honourable and sincere men should lend themselves to the deceits, the barbarities, the wilful blindness which we see daily displayed in our courts ; if we wonder that mixed with a desire for justice, and an evident belief in the value and importance of their work, they should be capable of such hardnesses, stupidities, such real ignorance of human nature, as many of them betray ; we must remember how paralyzing to all authentic human thought and feeling is the connexion with so rigid an institution as the Law—how inevitably it causes the mind to lapse into habits and formulae, which alas ! far from representing the most enlightened ideas, are in general a legacy of the barbaric past. We must remember too *who* these administrators and exponents of the Law are, and from what class they come. When we consider that, with rare exceptions, they are boys—the sons of country squires and so forth—who have been brought up at Eton,

¹ E. Crosby, loc. cit. p. 77. See also Appendix E "on Capital Punishment."

and similar public schools, who have been drafted with their fellows to Oxford and Cambridge, and who have then settled down to London chambers, and clubs, and the routine of the law courts, in which thenceforth they are to spend their days—we see at once that their outlook on life has from the first been of the most limited kind : they have sped along a narrow groove, which at an early date has landed them among the runs and burrows of the legal profession. Of the actual world they have seen next to nothing. The life, and conditions of life, of the ordinary workman, of the tramp, of the slum-dweller, the seaman, the farm-labourer, even of the small tradesman or shop-keeper—of all the classes with whom the (criminal) law most concerns itself—are really quite unknown to them ; the social necessities of the great masses and millions are not understood by them, nor wake any answering sympathy in their hearts ; few, very few, even know what manual labour is, or can ply a handicraft of any kind. Place men with such an education as this in positions where by rummaging among law-books and baffling unready witnesses they can win golden guineas and easy triumphs over their adversaries ; or calmly seated on the bench can appoint to the weary, sweated, broken-down waifs of humanity brought before them the endless tale of the prison-years ; and we may well understand the kind of result that we actually witness.

Naturally, it is not to be expected that reform of our legal institutions should spring from these sources. And yet one feels that reform—radical reform—must come. Government by Violence, and

44 PRISONS, POLICE AND PUNISHMENT

the apotheosis of violence in government, cannot continue—it is too greatly out of line and harmony with all the later development of human thought and social intuition. With their police and prisons for harassing and enslaving the working masses and the fringe of the unemployed (so convenient and indeed indispensable for the capitalist), with their military and conscriptions, with their maxim guns for mowing down mobs, the modern governments can only breed a counter-violence. Their methods, if continued, can only lead logically to the bomb—or if resistance ceases, then to mere quiescence, stagnation, and death.

III

THE SOURCES OF CRIME

WHAT, then, is to be done ? What is to be done to palliate the mischiefs, miscarriages and monstrosities of Law ? It might well be maintained (as Kropotkin and others do maintain), that its total abolition would be the best thing. Even lynch-law *might* be preferable. Mr. Darrow, whom we have already quoted, has in his book, *Resist not Evil*, these words :—“Uncertain and reprehensible as mob-law has ever been, it is still much more excusable and more certain than the organized force of society acting through the criminal courts. Mob-law has the excuse of passion, of provocation, not the criminal nature of deliberation, coldness and settled hate. Mob-law, too, generally reaches the object of its wrath, while evidence is fresh, and facts are easily understood and unhampered by those rules and technical forms which ensnare the weak and protect the strong. And unjust and unwise as the verdicts of mob-law often are, they still are more excusable, quicker, more certain, and less erring, than the judgments of the criminal courts.” This from a man of law, himself very familiar with the criminal courts, is a remarkable pronouncement. He does not *advocate*

46 PRISONS, POLICE AND PUNISHMENT

cate lynch-law, for he advocates entire non-resistance ; but he maintains that lynch-law is on the whole preferable to the criminal courts. And we think there may be more justice in his view than would at first sight appear ; for though settled law has no doubt been introduced in early societies partly for the purposes of obviating the evils of barbaric vendettas, reprisals, duels, and so forth¹—yet now, and in the later societies, in which public and mass opinion has advanced so far in humanity, while settled Law has in its turn become so antiquated and barbaric, a complete change in the reverse sense *may* be quite advisable and desirable.

But whether this is so or not (and it is a difficult matter to be certain about), it is clear that to recommend the sudden Abolition of Law is quite impracticable. That would be like recommending an Earthquake as a cure for city slums. It would be *too* heroic, and too difficult to arrange ! The huge apparatus of the Law is with us, and though a convulsion of society may arise and sweep it away, yet that would be a process which we could not command, and which certainly would be attended by huge collateral evils. All we can at present do is to modify and remould our legal institutions in the right direction. The dregs and scum of the old society exist, and will exist yet for a long period, and somehow or other they will have to be dealt with and disposed of during the time that a new and freer society is shaping itself. There will necessarily be a long and difficult period

¹ Partly also for the purpose of securing the ascendancy of a class (often a conquering tribe) over the rest of the nation.

of transition. That, however, is no reason why we should not begin at once to make the transition. Indeed, it is clear that if we are to save ourselves from destruction we *must* do so.

Let us, as a first approach to the question, consider what are the causes and instigations of Crime.

The first of these undoubtedly in influence and importance is Property. As we have said, about five-sixths of indictable crime consists in some violation of property-rights, or in some act of violence or fraud instigated by the desire for property or possession ; and, excluding drunkenness, the proportion in summary convictions seems about the same. Under such heads fall thefts, burglaries, highway robberies, fraudulent commercial operations, adulteration, forgery, swindling, illegal gambling, begging, betting, bribery, and all sorts of deceit, violence and threats of violence arising out of the desire for property or the disappointment at being deprived of it. Bad as this list sounds, and representative as it no doubt may be of a huge amount of human mischief and wickedness, it is as well to consider for a moment the reverse of the shield. For the whole system of property-rights, of which these crimes are an invasion, *is itself a system of giant wrongs and iniquities supported by Law.*

A man, for instance, builds a little cottage for himself on a bit of waste ground. No one would dispute his right to the cottage. It is impossible to imagine any of the neighbours trying to turn him out and occupy the cottage in his place, and anyone who did so would be hounded out by the little community. *No law is needed for such a case.* And in fact, I think

48 PRISONS, POLICE AND PUNISHMENT

I am right in saying that *no law exists* to secure to a man the work of his own hands—the most elementary of social rights. But plenty of laws exist which enable a wealthy man (wealthy enough to set the law in operation), or the State, *to take away* from another the work of his hands. Take the case of the said cottage. The whole little community acknowledges frankly and gladly the right of the man to the product of his own toil. But presently a powerful man, the lord of the manor, comes along. He acknowledges nothing of the kind. He claims the little bit of waste land as part of his manorial rights ; and with it the cottage. He has the whole force of Law, police and military, behind him. Resistance is useless. And he kindly allows the cottager to stay on, on condition of paying him a good rack rent. This has happened, and still happens, in thousands and thousands of cases, in England, not to mention Scotland and Ireland. In a generation or two the cottage is simply the landlord's, and the cottager's family has disappeared.

But more ; the landlord has fields and farms, adjacent to the neighbouring town, which he lets at an ordinary farm-rent, say one pound per acre. But now the town grows, and the land is wanted for building on. And the rent grows. The landlord demands £30 or £40 an acre ; and those who want cottages or houses must pay this heavy tax before they can build for themselves ; and even then they are building for the landlord, who will claim the houses when the leases fall in. And now again, the town has grown all round the property, and the man with the Law behind him is robbing the whole com-

munity to the extent of thousands, or even hundreds of thousands of pounds.¹ Even allowing his right to the original farm-rent of one pound per acre, what right has he by simply sitting still for 40 years, to now mulct and burden and impoverish the community to this degree? And the answer is, None whatever—except such right as the Law gives him.

Before this giant robbery, of Land-monopoly, which the Law organizes and abets, all these little thefts and thimble-riggings, for which men go to prison, seem insignificant and amiable indeed; and such things as Poaching and Burglary but reasonable and natural protests. But the matter by no means ends here. Not only are there ordinary rents and mining rents and royalties to be considered, but by this whole system of landlord occupation, inevitably a *landless* class is created who, unable to produce anything for themselves by the work of their own hands, are driven into the towns, there to sell their labour for whatever they can get. But what they can thus get is, needless to say, the lowest that (forced by competition and hunger), they will *take*; and this is far, far less than the actual value of the product they create; and thus the employer and his shareholders are enabled to carry off a large dividend for which, like the landlord, they have only had to

¹ In 1815, for instance, the Duke of Norfolk drew from his Sheffield estates, according to Hunter's *History of Hallamshire*, a yearly rental of £18,000. In forty years after it had more than doubled. In 1879 it was currently reported at £100,000 (see *Our Old Nobility*, by Howard Evans); and by now (1905) it is not improbable that it has doubled again; but unfortunately the public has no means in these cases of arriving at the exact figures.

50 PRISONS, POLICE AND PUNISHMENT

sit still and wait. So to the landlord and his monopoly, the shareholder is deeply indebted ; and in the matter of this great Property-system, landlords and shareholders go hand in hand, passing laws to secure themselves in their booty, and to defend themselves *against the general moral sense of the community*—passing laws to hamper trade-unions and to prevent the workers asserting their claims to a decent wage, confirming the landlord in his brigandage, and in all his prior rights over the individual and over the community, making picketing and poaching illegal, docking the rights of public meeting ; and punishing all the while, with hypocritical severity, the infractions of the ordinary criminal code to which men—by starvation and the absolute necessity of getting a living somehow or other—are sheerly driven. “ Well, then,” says Kropotkin, “ a half of our laws—and the civil law of all countries—have no other object than to maintain this property system, this monopoly, for the profit of the few, against humanity as a whole. Three-quarters of the cases decided in the civil courts are but quarrels arising between monopolists : two thieves wrangling over the plunder. And a large portion of our criminal laws have the same object ; since their purpose is to keep the workman subordinate to the employer, so as to assure to the latter a successful exploitation of the said workman.” ¹

In these lights it will be seen that far the largest portion of ordinary crime—the thefts, burglaries, poaching affrays, petty frauds, deceits, forgeries, impersonations, and other cases that come into our

¹ *Paroles d'un Révolté*, p. 237.

police-courts and the pages of the daily Press—are but a kind of fringe and spray of reaction and protest against the central and monumental iniquity of our social arrangements. The landless masses of the people, unable, owing to the obsession and pillage of the land by the few, to set themselves to work, are driven into the towns to seek employment at the hands of the capitalist class. There they become divided into two sections—one, the more skilful, strong, healthy, pushing and crafty, who obtain employment,¹ and the other, the weak, unhealthy, aged,² ineffectual, independent-minded³ and so forth, who fail even of this, and fall into the ruck of the unemployed, and the life of the tramp and the slum-dweller. At the bottom lies the casual ward, made as detestable and insulting in its conditions as possible—for the obvious reason that if it were in any way tolerable, it would be flooded by the mass of miserables outside³; and for another reason, not so

¹ That is the privilege, in return for a small wage, of being plundered by shareholders.

² A man over forty-five, once out of work, finds it very difficult nowadays to get employment again. And to be out-spoken and independent-minded is equally fatal.

³ For a concise and clear description of the conditions in the casual wards of our Workhouses, read *Five Days and Five Nights as a Tramp among Tramps* (John Heywood, Manchester, 1904), price 1d. The cold stone cells, with quite insufficient clothing, the wretched gruel, the dirt, the vermin, the insults, the lack of water, the impossibility of even washing any article of personal clothing, since the latter is all taken away on entrance and only restored at departure, and the long hours of hard labour required as payment—all this forms a picture of most evil import. It is fully corroborated by the article "Tramping as a Tramp" in the *Independent Review* for October, 1904. (See also *infra*, chap. iv. p. 77).

52 PRISONS, POLICE AND PUNISHMENT

obvious, but equally powerful, namely that for the purposes of the Capitalist, the *fringe of miserable unemployed*, always willing and waiting to take the places of those in work, is most important, since they act continually to keep down wages, and to increase his profits.

Here lies the whole Industrial System of to-day in a nut-shell. Any child can understand it. And the whole system, too, of the manufacture of criminals. This weary mass of the unemployed, pinned between the closed door of the factory on the one side, and the spiked railings of the Workhouse on the other, is the great source from whence our criminals proceed.¹ For it there are only three possible alternatives, the hideous, emaciated, parasitic life of the slums, supported from the mere scraps of food and employment left over by the richer classes ; the life of the tramp, which is practically treated as criminal ; and the life of open crime and defiance of law. There is absolutely nothing else. The folk must live somehow ; and which course they take, which life they lead, is merely a question of temperament. The entirely feeble, the timid, the aged, the shuffling, the hopeless, and the preternaturally honest take to the slums ; the hardy and independent take to the road ; and the more wretched, embittered, daring, ingenious, or reckless take to crime. It is only a wonder that the whole mass does not adopt this last method of livelihood²—for such for the most part it

¹ "Poverty is a culture-bed for criminals, paupers, vagrants, and for such diseases as inebriety, insanity, and imbecility." (*Poverty*, by Robert Hunter, New York, 1904.)

² The Report of the Departmental Committee for 1895, speaking of recidivism and the number of recommitments to

simply is. "*From the slums to the slums*," says the author of *Twenty-five Years in Seventeen Prisons*,¹ "might be written over the portals of every gaol in England. When I was undergoing that twelve months' imprisonment at 'the Ville,' I must have conversed with at least a hundred prisoners and the thing that impressed me most during that time, was the connexion which exists between homelessness and crime." It is a wonder that all the unemployed homeless masses do not take to open crime ; and we may almost wonder whether it would not be better if they did !

Of those then who do take to crime—from whatever tendency or temperament they do so—the more ignorant, imbecile or mentally diseased (and there are a large number of such among them) are at once caught. They are sent to prison, and on their discharge, having only the same homelessness to go back to, they almost inevitably take to crime again²—probably the same kind as before. After a few times they become the confirmed inmates of our gaols, the hopeless recidivists who are such a puzzle and a problem to our philanthropists—as if they were not a perfectly natural

prison in different classes of offences, has these pregnant words : "The percentage is highest where the offence offers to the habitual criminal the best means of obtaining a livelihood."

¹ London : F. E. Robinson & Co., p. 129.

² Speaking of weak-minded prisoners, the Report of the Departmental Committee of 1895 says : "Sentenced for the most part for very short terms of imprisonment, they are discharged only to return a few days afterwards ; or in other cases they spend their lives in circulating between the prison, the asylum, and the workhouse."

54 PRISONS, POLICE AND PUNISHMENT

and necessary result of the whole system ! And there comes to exist a recognized prison-population—for the most part a weak and feeble, dull and hopeless mass of people, but varied and enlivened by the presence among them of a few more daring and intelligent spirits, and very occasionally by a revengeful and really dangerous person.¹

It will now be seen that to *punish* or *torture* this prison-population—who have simply acted under the conditions exactly as their judges and prosecutors would have acted, and who cannot anyhow escape the law of human nature, which compels men at all costs to get some kind of daily bread—is nothing less than absurd. And the severity with which they *are* punished is not only absurd, but it is something worse—for since it can hardly arise from ignorance of the very simple facts which we have stated, we surmise that it is largely due to *fear*—the fear lest that should happen which we above suggested, namely, that the whole of the unemployed might break forth, and so break down

¹ " Every one who is familiar with the inmates of jails and penal institutions has learned to know the type of man that is confined as a criminal. In nearly every case these are inferior physically to the average man. In nearly every case they are also inferior mentally to the average man. One needs but to visit our criminal courts day after day to find that the average criminal is a stunted, starved, deficient man. More than this, almost universally they come from the poorer class—men and women raised in squalor and misery and want, surrounded from youth by those who have been compelled to resort to almost any means for life. . . . Here and there, of course, one finds some one in jail who has been differently reared ; but these are the exceptions, which in no way disprove the rule " (*Resist not Evil*, p. 87).

the sacred monopolies which are the stronghold of the possessing classes.

No ; to *punish*, in any vengeful sense, crimes against Property, is impossible. Clearly the remedy for the evil is to remove its main cause—the central wrong by which the few established in their monopolies are enabled to rob the masses of the people, and to *create* pauperism.¹ The remedy is to establish the people far and wide upon the land ; to enable folk by means of co-operative and national or municipal capital to employ themselves, and to see to it (no very difficult matter) that every one should have the opportunity of work, or the chance of employment. Then would it also be seen that crime against Property would almost disappear. No one, as we said above, would attempt to occupy the cottage which another man had built with his own hands, nor would the common sense of the community for a moment allow such a thing. No one, as a matter of fact, even to-day steals another's hard-earned loaf, or if this does happen occasionally, it is quite rare—even in a state of society which *encourages* and enforces the thieving habit. No, remove the central wrong, the central hypocrisy, which in truth makes every decent mind rise in revolt, and the other troubles would soon disappear.

But since this remoulding of the social organiza-

¹ And apparently in ever-growing degree. Thus the gross number of male paupers in England and Wales for the first half of 1904 was 243,859, while for 1877 the figure was only 164,548, showing a greater rate of increase than the population.

56 PRISONS, POLICE AND PUNISHMENT

tion must necessarily take a long time, and since meanwhile so-called crimes against Property *will* necessarily continue, and since also there are in the present society (and will be probably always in the future) a few in whom anti-social feeling is so far bred that they will violate the natural rights of their fellows, even when mere need or hunger does not compel them, it has to be considered what to substitute for Punishment.

Society has, no doubt, a right to defend itself against those who are a danger to it, and anyhow, whether it has a right or not, it certainly *will* try to defend itself. But having abandoned Punishment, there will only remain to it the methods of Sequestration and Reform. That is, it will remove the man whom it considers a danger from its midst for a time; and having removed him will, instead of torturing him, give him the healthiest conditions of life that it reasonably can—good food, decent surroundings for mind and body, and useful work to do, such as shall fit him to take his place again as a citizen, on the understanding, of course, that if, during such sequestration, he will not work, neither shall he eat or obtain the comforts which are the legitimate result of toil.

This is the only reasonable and possible course to adopt. And if it is said (as of course it will be said) that for some hardened and naturally vicious characters such treatment is far too mild and humane, we can only ask, What would be the gain either to ourselves or them of treating them with brutality? Work, industrial work, enforced in case of refusal by stoppage of supplies, is by no

means agreeable to some folk, and certainly would not be to criminals of the "well-to-do" order; confinement and the loss of freedom are obnoxious to everybody, and there are few who do not really feel the stigma of society's disapproval and censure. These things: sequestration, industrial work, and the strong expression of public opinion, are all that society has any right or any reason to impose upon the Criminal; for though there may be cases in which the badness or cruelty of the crime (as where a man deliberately tortures a child or an animal) seems to demand the swift answer of direct and painful punishment, and though there probably *are* cases in which such punishment does help to wake the consciousness and realization of guilt; yet such cases are really rare and exceptional, and to give to judges or courts of law the power of decision, and to put in their hands this power of Punishment, which we see so frightfully misapplied as it is to-day, is only to run the risk of a far greater evil than that which we are trying to avoid.

At best the possibility that direct Punishment mends the Criminal is a debateable point. There may be a few cases in which it has a salutary effect. On the other hand, there are certainly a vast number of cases in which its effect is baneful—hardening the man, wakening vengeful and anti-social feelings in his bosom, and a deep sense of injustice from his own point of view. When we consider that, as we have already seen, the immense majority of criminals are *compelled* by social conditions, sheer hunger, want of education, ignorance, and so forth to the acts which they

58 PRISONS, POLICE AND PUNISHMENT

perpetrate, and it is only the very few who can be regarded as deliberate malefactors ; and when we consider further that it is quite impossible even for the wisest judge to discriminate these very few whom Punishment might possibly benefit, from the vast mass who are the victims of bad social conditions and society's own wrong-doing ; then I say it is far best and wisest—and the only possible course—to abandon the idea of Punishment altogether.

So far we have mainly been considering crimes against Property—though, as the argument is much the same for others, I have not thought it necessary to limit my remarks entirely to these. Let us consider some other classes of crime.

There are those that arise from Drink—a large class—leading to quarrels, violence, insults, bad language, indecency and general disorder. Here again social conditions lie at the root of the trouble—the squalor and hopeless existence of the slums, the dreariness even to the ordinary workman in work, of a life which offers no *prospect*, no interest, no choice, but only a round of monotonous toil, ending in the workhouse ; then also the iniquity of the “tied house” selling abominable and poisonous brews, and the lordly Brewer sustaining his title and political influence out of the proceeds thereof. It is these things which in the main are the cause of the Drink evil. And here again, just as in the case of Property, we have an immense and central Wrong—huge financial interests sustained out of the degradation

and death of the people—and this Wrong honoured and enthroned in high places; while the victims of it are the daily bill of fare served up in police-courts and prisons. Of course, here too, it would be foolish to deny that some cases of Drink are so to speak “original sin,” or date back so far in the blood as not to be fairly traceable to existing social conditions; but the main mass of the evil is obviously a social *result*; and in any case it is obvious that Punishment is perfectly out of place, and perfectly useless. The Jane Cakebreads and others¹ show that imprisonments—how-so-oft repeated—are powerless to change the Drink habit. Here again, nothing but Sequestration under the very best and healthiest conditions, with suitable industry, can be of any use.

These two, Drink and Property, account for far the greatest part, perhaps nine-tenths, of present-day crime.

For the rest, there are the great human passions, Hatred, Malice, Revenge, and so forth—often connected or entangled with Property—but also often working independently to lead to Fraud and Violence. That these passions are bad and anti-social we may admit, and that they often bring widespread evil in their wake; but that they can be cured or mended by more Punishment, that is, by more Hatred, Revenge and Malice, it is difficult, or impossible, to believe.

¹ Thus (Daily Press, Aug. 20, 1904): “*Thirty-second appearance.* Prisoner, who was charged with being drunk and incapable, and had been before the magistrates thirty-one times previously, was fined 10s. 6d. and costs, or fourteen days’ imprisonment in default.”

60 PRISONS, POLICE AND PUNISHMENT

So also with crimes of Lust—leading to violence or fraud—and even with crimes of Cruelty, which more than any other provoke the desire for retribution.¹ We have already given reasons why it would be unwise, even in this last case, to allow the method of return-Cruelty to be generally adopted. Confinement, yes. To exercise this society has a perfect right, simply in its own self-defence ; but Punishment, in the sense of mere infliction of suffering, no. The eradication of these ill-passions may—even if possible at all—be a long and difficult affair ; but the best way towards that end must undoubtedly lie in the placing of the criminal in the healthiest practicable conditions of life.

There is another and more negative source of Crime, in carelessness, neglect, laziness—as in neglect of children or parents, desertion of wife and family, and all kinds of negligence on rail or road, or in field and factory, leading to serious accident. Here, again, it might be said that short, sharp Punishment would be of great avail, as wakening the negligent one to a sense of duty and responsibility ; but, on the other hand, it might well be maintained that (in serious cases) a considerable period of detention under conditions entailing clearly-marked industrial duties and responsibilities, would be even more effective.²

¹ In the list of summary convictions in England and Wales for 1903-4, amounting in number to 181,000, the two items cruelty to children and cruelty to animals together amount to about 1,500.

² See in regard to the *length* of sentences the following paper.

In general it is obvious that the treatment of Crime in the future, as far as it is the result of evil and anti-social passion, must approximate to the treatment of lunacy or idiocy. No one thinks nowadays of flogging and punishing the feeble-minded, partly because it is clearly unfair to do so, partly because it is simply useless. And before long it will surely be seen that the same reasoning applies to the moral lunatics who are the products of our slums and other diseased social conditions. And as to that large majority of Crime, which is not due to evil and anti-social passion, but merely to the sheer necessity of getting some kind of living in a world where every avenue of so-called honest livelihood is closed, there is here even less excuse for severity.

What then we have to do, in the face of Law and Crime, is first of all to clean up our social system. There clearly the root of the evil lies ; and whether it be transformed gradually, or whether by a sudden and swift cataclysm, transformed it must clearly be.

Meanwhile, one of the very first and most practical things to do, and to be done at once, is to turn the Prisons into Industrial Asylums, for cure merely. The whole idea of retributive Punishment as ruling the procedure of our courts and prisons must be given up ; however appropriate Revenge may seem *in cases*, it must be waived, and the only two thoughts which can be allowed must be (1) society's right, for its own self-defence, to seclude the criminal for a time ; and (2) its duty to give him a healthy industrial life,

62 PRISONS, POLICE AND PUNISHMENT

with a view to his reform and future fitness as a citizen.

The Prisons must be made at once into Industrial Reformatories, where the inmates will at least earn their daily bread by such labour as can be provided, and only punish *themselves* by the refusal to work ; where the conditions of life will be of the healthiest ; and where as much freedom as by any means possible, and with it sense of responsibility, will be encouraged.¹

And the Laws generally, following this changed view of punishment, must become less penal, less vengeful, less hungry for conviction and imprisonment, and more simply regulative.

Looking around us we see all the elements of a free human society preparing. Education, widespread, is bringing a knowledge of the conditions and necessities of mutually helpful social life even to the least instructed. It is bringing also a far-reaching sense of human dignity and equality. Public opinion and discussion ramify everywhere, and hold the community together by strong, yet elastic, bonds. In the midst of this the independent action and initiative of the individual is needed as a counterbalancing force, and is to be encouraged, rather than suppressed by excess of Law. Fear and hatred, the old progenitors of cruelty and violence, are dying out ; and the powerful, even if not moved

¹ The George Junior Republic, in New York State, which is practically a reformatory institution for boys between twelve and nineteen, and which is mainly managed by the boys *themselves*, affords an excellent example of the value of freedom and responsibility in such matters.

by pity, seek to conciliate the masses rather than to terrorize them. All is preparing for a freer, more fluid, more swiftly sensitive and responsive state of the social organism, in which Law if still retained, will assimilate itself rather to Custom, and will relax the rigid, harsh and senseless grip with which to-day it strangulates humanity.

PRISON REFORM

WHETHER Society may one day (as suggested at the close of the last chapter) succeed in dispensing with legal institutions and their attendant evils, or not¹—we see that for the present, at any rate, these institutions exist; and the practical question before us is to determine how they can be moulded and modified in the right direction.

The first and most obvious step needed is the replacing of the notion of Punishment by the principle of Reclamation.

Prisons (we have said) must be turned into Industrial institutions—Houses of Detention or Reformatories—with all elements of decent life and labour: the chief compulsion being that those who will not work shall not obtain the ordinary food and comforts—so that in a sense the prisoners shall *punish themselves*, and thus realize the connexion between industry and its results, so necessary in social life.

And here it is very satisfactory to note that very decided advances have been made in this direction by our Prison Commissioners. Since the passing

¹ For further discussion of this question see below chapter on *Non-governmental Society*.

of the Act of 1898, oakum-picking, the treadmill, and other degrading and useless kinds of labour have been largely abandoned¹ ; corporal punishment has become less frequent ; various new industries for prisoners have been opened out,² combined with a certain amount of tuition, and associated manufacture ; and there has been some development of farm and garden work. It is pleasant in the Report for 1903-4 to read the following : "Special attention has been given to the development of female industry at Holloway Prison. A work-room has recently been provided for 100 women, as a further means of developing associated labour, the advantages of which, for a female population, are, in the opinion of the Governor, quite beyond question. Reports for misconduct are rare, the privilege is appreciated, the prisoners work well and cheerfully, reports for idleness are almost unknown, and more work is turned out than is strictly required under the prescribed task. At this prison, too, numbers of unskilled women learn the various branches of laundry work, which in London offers considerable scope for women workers. The average number of women employed

¹ "Beyond keeping unskilled labourers from idleness there is no redeeming feature about oakum-picking. On the contrary, the work is of a low grade, second only to the obsolete treadwheel ; the task is at all times difficult to enforce ; and the oakum, even when well picked, seldom commands a ready sale. For these reasons it would be well to reduce the number of pickers to a minimum, consisting solely of men in the various stages who are quite incompetent for anything better" (*Report of 1903-4*, p. 62).

² As book-binding, cabinet-making, foundry work, printing, lithography, etc.

66 PRISONS, POLICE AND PUNISHMENT

in manufactures has been 510, as compared with 288 in the previous year."

Also it is encouraging to find that the scheme, which provides for lectures to the female prisoners at Holloway on secular subjects like health, nursing, sanitation, etc., has "so far worked with perfect success."

With juvenile and youthful offenders (up to age of 21) much has also been done. Since October, 1902, the prison at Borstal has been dedicated to the reclamation of young criminals (especially those who have been previously convicted); and it is good to read that the Commissioners hope the effect of this movement will be "to give a permanent form and name to a change in the prison system, tentatively begun and slowly realized; and resting on the principle made familiar to English readers by analogous attempts in certain States of America, at Elmira and at Concord, viz.: the principle that up to a certain age every criminal may be regarded as *potentially* a good citizen; that his lapse into criminal habits may be due either to physical causes or to bad social environment; that it is the duty of the State, at least, to try and effect a cure, and not to class the offender offhand, and without experiment, with the adult professional criminal." The results so far are pronounced most satisfactory, and such as to call for "an extension of the system." Excellent work, in tinware and carpentry, has been turned out; the conduct of the youths is termed exemplary; they take a pride in the neat appearance of their cells and furniture; and are allowed to meet on occasions of an evening for draughts, chess, and other recreations. Further the Committee

recommends the providing of "a labour-home or farm-colony, under Government control, to which juvenile-adults would be sent on leaving prison, and compulsorily detained, until suitable employment could be found for them."

These movements with regard to some of the female prisoners and some of the youthful prisoners are so obviously in the right direction, that we can only hope they will be carried further and extended to the male adults also; as well as to all females and juveniles. Certainly their success so far must encourage extension.

For while every juvenile may certainly be regarded as potentially a good citizen, it does not follow that the adult criminal may not also be regarded in the same light. Every criminal, whether juvenile or adult, on his *first* appearance in prison may fairly be credited with the potentiality of decent citizenship—though of course there will be *some* such adults whose anti-social habits will already be confirmed and hardened. But that a favourable view may be taken of the great bulk is pretty clear, even from the stern pages of the Blue Book! "The record of punishments for prison offences shows, as in former years, that the great bulk of the prisoners *conform to the rules and require no punishment*. Breaches of rules are confined to a comparatively small number of prisoners who are disorderly and incorrigibly idle."¹ If the great bulk conform so

¹ Also with regard to prisoners having hospital privileges: "It is satisfactory to note that in no single instance has any complaint been made of the conduct of the patients, or of their abuse of the privileges conferred on them."

68 PRISONS, POLICE AND PUNISHMENT

readily to prison-discipline—which for the most part is merely repressive, and no doubt at times is very exasperating—one can hardly avoid the conclusion that the great majority again of these would yield to moulding and educative influences towards better and pleasanter things. It was found for instance during 1903-4 that out of 10,026 prisoners "eligible for school instruction" in local prisons, 7,591 "made substantial educational progress"—passing one, two, three and even four standards during that time. This proportion is really remarkable, and shows widespread *willingness to learn*, without which progress is rarely made. Moreover, "the complete separation of first offenders from habitual criminals, which commenced in 1897-8 by the establishment of the star-class system in all local prisons" has yielded these results: that in the seven years elapsed, out of 45,078 males placed in the class, only 7.7 per cent. have been re-committed to prison under fresh sentences; while in the case of the convict prisons only 1.36 per cent. of the star-class have returned to penal servitude. Since every prisoner must at some time be a first offender, it remains to bring every possible ameliorating and civilizing influence to bear upon this class, and so finally and effectively to extirpate the evil and the scandal of recidivism.

For the figures in connexion with recidivism are certainly somewhat serious. In the Prisons Blue Book for 1894-5 we find that out of 175,700 offenders received into prison that year 85,000 had been previously convicted; while for 1903-4 the corresponding figures are 189,800 and 106,800—showing

that in the latter year considerably more than half had been previously convicted. Again we find that in both cases the number of offenders who had been *five* times previously convicted is not much less than the number *four* times previously convicted (in 1903-4 the numbers are 5,660 and 7,200 respectively)—which seems to show that after 3 or 4 convictions an offender is almost sure to return again to prison.¹

Such figures bring it very clearly before us that the evil of recidivism must either be ascribed to the system, or to the congenital nature of the criminal. Either the criminal must be a hopeless case from birth, or the system must be very much at fault which, instead of reforming, causes him to return again and again to prison. But as it would be absurd to suppose that the great majority of offenders are hopeless cases from birth (though this may be true of some), we are forced to ascribe the main fault to the system. In either case we may conclude that mere *punishment* is of no use; since obviously in the case of defective birth it cannot apply; and since also the system, which hitherto has been founded on the idea of punishment, has itself so greatly failed.

Reform then, and a rational, industrial life, are what we must look to.

But directly we come practically to apply this idea we are met by a difficulty which demands not a little consideration—that of short sentences. Anyone who has frequented London police-courts knows how the sentences are rattled off—“three

¹ See also chapter i., p. 15, *supra*.

70 PRISONS, POLICE AND PUNISHMENT

days," "seven days," "fourteen days"—each case taking on an average say three minutes to dispose of.¹ What is the use of all this?—one naturally asks. Let alone the hasty judgment, the slight evidence, what is the use of the short sentence? It just familiarizes the offender with prison-life, and that is about all. It does not interfere with his professional life more than a trip to the seaside would; it does not modify his habits or character in any way. And for reform it is clearly useless. Yet on looking at the Report for 1903-4 one finds (p. 78), that out of the total commitments to prison—189,740 for that year—as many as 121,889 were for periods of fourteen days or less.

And here we may quote an instructive passage from the same Report, indicating a programme of Reform treatment. It is true that the programme only applies to State *Inebriate* reformatories, but we cannot but think it will be ere long applied to general prison treatment. "Purely penal methods having proved useless in the direction of individual improvement, and apparently also of little value in checking the growth of the inebriate class, it was decided to adopt systems which should have for their object reformation rather than punishment. The main principles governing the plan so substituted being: longer periods of detention to allow the possibility of medical treatment and recovery to normal physical health; committal to a life of pleasant surroundings with good moral influences

¹ "A Marylebone magistrate, it is believed, holds the record for speed at seventy-five cases in ninety minutes" (*Police Work*, by James Timewell).

and regular work ; and the adoption of every possible means to enable inmates on leaving to make a fresh start in life under conditions of improved mental and physical vigour. The aim of reformatory work, as a whole, is to carry out these principles.”¹ Substitute in this passage the word “criminal” for the word “inebriate” (a substitution which seems suggested by the last sentence in the passage), and we have the outline of a broad and rational system of general Reform treatment.

For such treatment, *longer periods of detention* are of course necessary. And it is evident from the sections of the Report which deal with ordinary crime, that some move in this direction is recommended. On p. 62, speaking of the prison industries, it is said “most of the sentences are so short that very little can be done in the way of tuition.” On p. 47, speaking of prison education, “the general opinion is that longer sentences are needed if the reformatory influences of the school are to be as effective as they undoubtedly can be.” And again, on p. 26, speaking of Juvenile offenders, “the Committee deprecate most strongly these short sentences, and consider that in many cases they are worse than useless. They would, therefore, urge that power be given to magistrates to increase the sentences in the case of young prisoners, in order that a thorough and efficient training may be given, or, better still, that they be sent to reformatory schools.”

The moral of all which seems to be that with

¹ Report of the Commissioners of Prisons and Directors of Convict Prisons for the year ending March 31, 1904 (p. 67).

72 PRISONS, POLICE AND PUNISHMENT

regard to Short Sentences the best plan will be (in most cases¹) to abandon them altogether. This would certainly be, considering their immense number, an enormous simplification ; and probably, considering that the Report speaks of them as "in many cases worse than useless," a very great improvement. The substitute would be a serious warning by the magistrate,² and a registration for identification purposes by the police, perhaps a fine added, and possibly in cases a warning to the public concerning the offender ; and then on further conviction up to three or four times, the magistrate to be empowered at his discretion, to send the offender for a period of *some months* to a Reformatory-prison, where there would be good hopes of his learning other habits than those which brought him into trouble.

Something similar would be the procedure in the higher courts ; only there, as the sentences in general do already range to a few months and upward, there would be less change, and immediate relegation to a reformatory would be more practicable. In both classes of courts, though the periods of detention would be fixed by judge or magistrate, it might be open to the governor or committee of the reformatory on their own judgment, or in accordance with a system of marks as in the present prisons, to modify or reduce the period.

Another difficulty, and one which brings us very

¹ Perhaps "drunks" should be an exception, since two or three days' seclusion is almost necessary in such cases !

² The First Offenders' Act does now allow a prisoner convicted of a first offence to be dismissed with a warning, but goes no farther than that.

near the heart of the whole prison-question, is that of the physical and mental debility of large numbers of criminals. It has to be realized that criminals are drawn for the most part from classes who are puny and deteriorated both in mind and body—the mere wastage of society. Speaking of the juvenile-adult prisoners at Borstal, the Report of 1903-4 finds them small and defective in comparison with the *artisan class of town-population* (itself not a high standard); and goes on to say (p. 42) of youthful criminals in general that they may be considered as "not up to even the lowest standard, for the juvenile-adults at Borstal are physically and mentally the best of their class—youths with grave constitutional disease or mental defect not being eligible for the Borstal treatment." Another illustration of the physical debility of the convicted is the fact that so many die almost immediately after their reception into prison. In the Report for 1903-4, the Medical Inspector says: "I would again draw attention to the deaths of several prisoners occurring soon after reception into prison. No less than 24 or 25 per cent. of total [who died in prison] from natural causes died within a week. It seems a travesty of justice to send a poor, wretched creature to prison with hard labour when he is so ill that he dies in a few hours; but it must be assumed that cases like these show no outward indications of illness either before or at the trial to attract the attention of police or magistrate and secure for them the medical attention they certainly need." Here we see, as in miniature, the conditions which must certainly apply to a vast number of

74 PRISONS, POLICE AND PUNISHMENT

cases—the hungry, underfed, ill-clothed and ailing man or woman in desperation violating the law, and immediately succumbing to the deliberate starvation and other rigours of the first week in prison.¹

The mental side is no less striking. In the Report for 1894-5, the Medical Inspector accepts it as a fact "that among the prison population the ratio of insanity is not less than *three times* as great as among the general population of the same ages." He does not, however, infer from this that the discipline or other conditions of prison-life have any share in inducing the insanity; but ascribes the high rate to the sources from which prisoners are drawn. He says: "The inmates of the local prisons are recruited from strata or classes of society not far removed from paupers, and a reference to the last annual report of the Commissioners in Lunacy will show that the rate of insanity among paupers is very high. According to Table IV. of that Report, there were 211,610 male adult paupers in England and Wales on January 1, 1894, and of these no less than 36,088, or 17.05 per cent. were insane." *Seventeen* per cent! And farther on in the same Report: "A ratio higher than that prevailing among the population in general is only what might be expected, when regard is paid to hereditary influences, and to influences of a degrading, demoralizing and morbid

¹ The diet given to prisoners sentenced for seven days or under, and also for the first week in the case of sentences of more than a week and not exceeding one month, consists of one pound of bread, and a pint and a-half of stirabout daily, the stirabout containing three ounces of Indian meal and three ounces of oatmeal.

character surrounding, from infancy onwards, the children of the classes from whom criminals are chiefly recruited. It may be taken as certain that there are many lunatics wandering about the country who will not be recognized as lunatics until they commit some act bringing them within the four walls of a prison." And with regard to the great number of lunatics or weak-minded who are committed to prison as if responsible persons, the Report of 1903-4 says (p. 40) : " 54 per cent. of those certified [as insane] in prison this year were found to be of unsound mind on reception."

Close-linking to this subject of the mental and physical debility of offenders, is that of their extreme poverty for the most part. In 1903-4 as many as 101,756, who might have escaped by payment of a fine, were imprisoned " in default " ; and of these only 15,500 subsequently paid the fine or a portion of it. When it is considered that those cases which have the option of paying a fine, are cases of drunkenness, or infringement of police and sanitary regulations, etc., and are by no means of a very " criminal " character, one is all the more impressed with the probability of the extreme poverty of the really criminal classes, and of their consequent " debility," both physical and mental.

All these things make the conclusion more and more obvious that mere *punishment* must be abandoned ; and that reform must go more and more in the direction of health-giving life in Workshops and on Farms. Healthy industrial life must be made the basis of the reformatory system. The feeble-minded and bodied must be treated for what

76 PRISONS, POLICE AND PUNISHMENT

they are, as the sad product of social errors ; and must be given such occupation or work as they are capable of. The more able-bodied and capable must be trained with a view to their return to life in the outer world. Throughout, the fundamental connexion between labour and its natural rewards must be kept in sight, as the main engine of regulation and stimulus. And where a man has injured another in any way that can be estimated by money values, as by theft or personal violence, it would be well to make him realize what he has done by working off, in the industrial House, the full value of the injury inflicted. This, so far from being a mere punishment, would be a fulfilment of social justice, and a help to the offender—having made compensation—to return to society again with a clear conscience.

It may be hoped that the outcry about Trade, which has generally accompanied proposals for the introduction of Industries into Prisons will now cease. As a matter of fact there are a great number of industries now in operation in the prisons, of the most various kinds ; and the difficulty of undue competition with the general market has been largely overcome by the orders being filled for Government Departments. Anyhow the chief drawback with regard to Competition arises from fluctuating or excessive supplies thrown into the general market—a thing which does not happen of course with the steady and uniform output of the prisons ; and beyond this we may safely say that the advantage to the general community, and the saving of rates due to the productive labour of prisoners, far out-

weigh any disadvantage likely to accrue to a private trader. Besides the same question is now arising on all sides with regard to the workhouses and farm and other colonies for the unemployed. The necessity not only of inducing industrial habits in these masses of population, but of making them as far as possible self-supporting, is becoming more and more apparent.

We are in fact being driven from all sides in a Socialist direction. The problem of the destitute man in search of work, treated as a criminal if found "sleeping out, and without visible means of subsistence," and treated practically as a criminal if he takes refuge in the casual ward (locked in a bare stone cell, and made to do six or seven hours of bone-breaking work for a miserable dole of food and lodging) is compelling us to find and provide some decent and honourable employment for those at least who are willing and able to work. The permanent workhouses have already largely solved this problem, and are moving in the direction of farm-colonies and land-cultivation. The prisons are, or ought to be, practically continuous with the workhouses and casual wards. They deal, for the most part, with the same problems—of poverty, debility, idleness, outcast and desperate life—only in their more acute forms. Their remedies must be of the same character, and along the same general lines. Education for citizenship, and the providing of some kind of decent employment and reward for those who have lost their way in the struggle, are the duties which are pressed upon the public bodies to-day.

78 PRISONS, POLICE AND PUNISHMENT

With the adoption of some of the changes above sketched, it may be possible to largely reduce the numbers of the population who pass through the "often worse than useless" ordeal of the short sentence, and at the same time to secure to those who *are* committed to prison or reformatory such improvement in their capacities and prospects as to prevent the evil of recidivism. In both ways the floating prison-population will be drawn off and greatly reduced. It will only remain for the rich to give up their criminally selfish lives and institutions (which, after all, are the main cause of criminality among the poor), for the prison-population to be dried up at its source. If, however, they will not do this; if the cultured and powerful refuse to acknowledge their responsibility, and continue to live by the process of thrusting others down into the ditch beneath them, then no remedies of draining and tapping will be of much avail; the morass will continually be fed from above, into which at last society will fall, to its own undoing.

NOTE.

The following is a list of Prison and Judicial Reforms proposed:—

(1) The conversion of the Prisons into Industrial Reformatories, with associated Labour and conditions favourable to a healthy life; and the abandonments of the evils of the Solitary System (*See Chapters I-IV, and Appendix A*).

(2) The cultivation of Farm lands in connexion with all such Reformatories; and a continuous scheme by which prisoners on the expiration of

their sentences could be transferred if willing from the Industrial and Farm work of the Reformatory to similar work in ordinary colonies for the unemployed.

(3) Instead of short sentences, to substitute at first warnings or fines, leading finally on repetitions of the offence to a long Reformatory sentence (*See Ch. IV*).

(4) The adoption of the Indeterminate sentence, and of the Probation system—both as practised in the United States, and to some degree already in connexion with our juvenile-adult prison at Borstal (*See Ch. I*, p. 25; also Appendices B and C).

(5) To remove the power of sentencing to Corporal Punishment entirely from the Courts, and to allow it only under conditions to the Heads of Reformatories (*See Ch. III.*, p. 57; also Appendix D).

(6) The complete abolition of Capital Punishment (*See Appendix E*).

(7) The entire reform of the treatment of prisoners under remand, or awaiting trial (*See Appendix F*).

(8) The establishment of a Court of Criminal Appeal (*See Appendix G*).

THE POLICE SYSTEM
WHO SHALL WATCH THE WATCHMAN ?

A THING that is very noticeable in London—and every year more and more so—is the enormous number of police patrolling the West End. In Kensington and Belgravia you will find a policeman at every corner, and you can hardly walk a hundred yards without meeting one or two. On the other hand, in the East they are conspicuous by their absence. You may walk down wicked Whitechapel and the Mile End Road till you are tired, and perhaps see only one all the way. Must we conclude that the West-enders are such violent and unruly folk that they require this great public expenditure to keep them in order ? And yet it is generally supposed that the chief haunts of crime are in the East End. And even if this is not true there is certainly so much poverty and distress in the East that one might think the services of the champions of order would be most needed there.

Or must it be whispered that the chief object of the police, and of the vast public expenditure connected with them, is the protection of the wealthy classes and their ill-gotten gains ; and that these

uncomfortable objects that crawl along the fronts of the West End mansions are only the emblems and outward and visible signs of the diseased consciences of those who live within?

The growth of the police, in late times, both in numbers and power, is a serious matter requiring grave attention from a people that wishes to remain free and independent. The evils of police systems in foreign countries, culminating perhaps in the bureaucracy of Russia, are common themes: but we do not always ask ourselves how far our own institution is drifting in the same direction.

It is curious nowadays to think that London existed up to 1829 without any organized police-force—only a few constables and watchmen. The introduction of the Metropolitan Police by Sir Robert Peel in that year was strenuously opposed in the House and elsewhere, as an imitation of foreign methods, and as a usurpation for State control of what ought essentially to be a local or municipal institution. The force itself, under the nicknames of "bobbies" and "peelers," was a good deal derided by a people perhaps more jealous of their personal liberties than the Londoners of to-day; and when in 1833 a *fracas* occurred between Chartists and the new police, in which one of the latter was killed, a coroner's jury returned the verdict of "justifiable homicide."¹

The Metropolitan police-force began with 3,000 to 4,000 members in 1829, had increased to 5,734 in 1856, and now numbers about 17,000. The City

¹ See *Government by Police*. By Josephine E. Butler. Dyer Bros., 1879 (now out of print).

82 PRISONS, POLICE AND PUNISHMENT

Police have all along remained separate, and number about 1,100. Alongside of this increase in numbers, the force has steadily become more and more military in its character, with its horse-patrols, drillings, and attempts from time to time to introduce swords or revolvers. The detective department has similarly increased, till it has become very extensive and powerful.

The detective and secret police have a great sway in all police-systems : obviously must have. They know—it is their profession to know—things, of which others are ignorant. They act as the brain, to which the ordinary constable is only the body or arm. And so they have the morals of society, so to speak, in their charge. Yet what sort of life is the life of a "tec" ? Fancy yourself sitting four or five hours a day for a week or more, in the window-seat of a tavern, in order to command from your point of view a particular street, or house in the street ; drinking plentiful beer or spirits, to conciliate the landlord ; treating customers, making them more or less drunk ; playing a false part, inventing talk and all sorts of stories, worming out secrets—all in order to prove something it is very much to your interest to prove. And fancy living such a life as that, year in and year out. (For though there are, of course, many lines and grades of detectives, their work has throughout the same general character.) And then think of the "morals of society" being in the hands of men leading a life of this kind ! Is it not obvious that in most cases the existence and influence of such people is a worse evil than the crimes they propose to remove ?

Hunting is a primitive occupation of mankind and to certain classes of mind is still an intense delight. A rat-hunt or a fox-hunt are exciting, but a man-hunt beats them all. Only it is perhaps the most dangerous and perverted class of mind which takes to this last sport—subtle, acute, treacherous, and wanting in humanity. If the existence of private detective agencies is a sad feature of modern life, which we cannot exactly prevent, ought not society to be very careful how it encourages the same thing with public money? And is it not really a shame to ask and tempt men to join so degrading a profession?

The ordinary constable, though not apt in all the arts of the "tec," has to follow the same cues. He must make points—show his "efficiency"—which means, if he has scored nothing for two or three weeks, it is getting time to run someone in. It would be absurd to accuse the police of being worse than the average run of folk. There are good enough and bad enough fellows among them. But it is only too clear what their temptations are. Sir John Bridges once complimented a retiring officer very heartily on the fact that he was *not* in the habit of trumping up cases. To swear a man has been drunk or that a girl was creating a disturbance is easy if there is any grudge or other incentive at work, and to get the corroborative testimony of other constables is easy. The "force" always hang together. Magistrates and judges accept their evidence, as a rule, with distinct favour, and avenge any injury to them with marked severity. It is horrible to think of a case like that of Winstanley,

84 PRISONS, POLICE AND PUNISHMENT

who was caught in 1895 by a police-officer cutting the cords of a railway goods-waggon with a view to looting. A struggle ensued, in the course of which he stabbed the officer with the knife in his hand, mortally as it happened. He behaved well at the trial, taking all the blame on himself and completely exonerating his companion (who was struggling with another constable); was, nevertheless, condemned to death, and hanged. There is a long stride from the "justifiable homicide" of '33 to the unrelenting gallows of '95.

I am afraid also there is a good deal of truth in the accusations of brutality to defenceless prisoners in the cells, which I have heard in some cases even from members of the "force" itself. Naturally there is often a grudge against a prisoner. Sometimes it is only "sport." A thump in the abdomen from the powerful knee of a policeman as you are passing from the dock to the cells leaves no outward mark on the body, but may easily disable you for life.

The chiefs of the local police are, I believe, as a rule, a sensible body of men (though perhaps not always acquainted with everything that goes on among their subordinates)—of good sober common sense and reliability: this greatly owing to their appointment by the municipalities and *not* by the State. But here, again, we have to be on our guard against a certain proportion of them, who, for the sake of notoriety and promotion, are ever ready to magnify and even "provoke" offences in order to display their ability in exposing them.

Taking it as a whole, the system has deep-set evils—briberies, tyrannies, iniquities, secrets—which

always come in where any class of men is endowed with power over their fellows. And one of the evils is the danger of its growth and further centralization. For all history shows that when in these cases the alien growth has spread beyond a certain point in the social organism it is almost impossible to remove it. The example of Russia should be a warning, where a police-system so vile and corrupt has grown up, that it has paralyzed the mass of the people, and rendered even the most well-intentioned Tzars powerless to cope with it. So that even now the best hope for Russia is in the very corruption itself, and the complete breakdown of the bureaucracy and of the nation under the great strain of the Japanese war—that is, that the whole nation will have to die before it can be born again.

The truth is that in the case of a system like the police, the permanent and head officials—*being* permanent, and having at their disposal such authority, so many clues, so many secret agents as they have—are practically *more powerful* than the heads of the Government of the day. A Minister, in office for two or three years, may express a pious opinion ; but the Chief of the Police, with a shake of the head and the aid of a few well-arranged facts (or even threats) can convey an argument unanswerable. And this is not only the case in such a country as Russia. Even in "republican" France it is said that Marshal MacMahon and other Presidents have been in the habit of consulting the Prefect of Police, with regard to State affairs, first thing every morning.

In 1876 and following years the Municipal Council of Paris was engaged in a series of struggles with the

86 PRISONS, POLICE AND PUNISHMENT

Prefect of the Police, over the conduct of the *police des mœurs*—the police, that is, who are commissioned with the control of the women of the streets ; and who had greatly abused their powers. Nominally and constitutionally, the Prefecture of the Police is under the control of the Municipal Council ; but already before this the former had risen to such power as to defy control, even by the body which supplies the greater part of its funds. The Municipal Council was fain only to apply for a Commission to "inquire" into the conduct of the said police. Even this, on the appeal of the Prefect, was refused by President MacMahon. It was only in 1879 that the Commission was granted ; and then the members of it almost immediately resigned—because the higher police *refused to give evidence* on the plea of "official secrecy," while the subordinates declined for fear of "personal consequences" !

This shows us the kind of thing that occurs even in a constitutionally governed country like France ; and we have to bethink ourselves not only what may, but what does happen at home.

The efforts of our London County Council to obtain control of the Metropolitan Police, and their failure hitherto, point in the same direction. It is easier to get the Old Man of the Sea on your back than to shake him off. Yet the progressive section of the County Council is on the right track in demanding this reform. It is only by persistent *de-centralization*, and the keeping of the police arrangements well within the hands of the people themselves and their local representatives, that a considerable danger can be averted. And it is useless to pride

ourselves on the moderation of our own institutions and their superiority over those of other countries, and to go on doing so, living in a fool's paradise, till perhaps it is too late.

The large number of recent Acts of a regulative character have led to considerable increase in the duties of the police, which are sometimes really onerous. Nor in accusing the system need we forget that the individual "copper" often has some very trying work to perform.¹ But this increase in duties, coupled no doubt with a general feeling of timidity among the authorities with regard to strikes, riots, etc., has led to a vast increase in the numbers ; and it is easy to see in what direction the whole system is tending.

It is the opinion of many folk that efforts should be made in the future to keep the numbers down, or at least prevent their increase. Duties should be limited as much as possible to the regulative—the regulation, for instance, of traffic in the streets, the reporting of nuisances, smoke, garbage, foul drains, etc., to the proper authorities, assistance in case of accidents, ambulance work, and so forth. Work of this kind has what may be called a *positive*

¹ The duties and the trials of an ordinary Police-constable are really bewildering — to regulate traffic, nuisances, public health, doors and windows, obstructions, street music, hawkers, porters, meetings, beggars, women, drunkennesss, public-houses, the smoke-nuisance, brawls, assaults, larcenies, burglaries, accidents, riots, fire, etc. —to endure rain, fog, snow, excessive heat and cold, to retain presence of mind amid crowds, solitude, dangers, insults, and violence, and through all to remain calm yet firm —all this seems to demand a character of really extraordinary culture and strength.

88 PRISONS, POLICE AND PUNISHMENT

character ; it is actually an effort to build up a decent and healthy life among the people ; it creates friendly relations between them and the police ; and has (what is worth considering) a favourable effect on the characters of the latter.

With regard to the Criminal Department I think (though some may not agree with me) that the importance of this should be reduced. Too much is made nowadays of this man-hunting business, and this running in of wretched waifs and strays to docks and prisons, where, as we know, even the worst criminals are often made worse.¹ Is society really so much afraid of its outcasts ? The most numerous offences (after drunkenness) are those against property ; and that the protection of this latter is considered by far the most important duty of the police is proved by the almost comic sight (already alluded to) of the scores of huge constables prowling round the mansions of the wealthy, turning their bull's eyes piously into areas and keyholes, while the poorer quarters (often in the same police-division) are left almost deserted by the champions of order. But directly you come to think about the matter you see that it practically matters very little if some plate is stolen out of a butler's pantry in Kensington ; but that it does matter very much if a factory chimney is allowed to poison Bethnal Green with smoke, or if a heap of filth is left uncleared in a slum-court there.

¹ " Long periods of imprisonment and penal servitude, however, often make him (the habitual prisoner) desperate, and determined when again at large not to be taken alive " (*Report of Departmental Committee, 1895*).

After all it is much more important that a policeman should convoy an old woman safely across the street, or give reliable information to passers-by, than that he should "cop" a lad "snaking" a loaf from a baker's cart. The lad stealing the loaf *may* be doing a generous act, for the sheer need of his kinsfolk ; but if taken before the magistrate he is almost certain to be converted into a professional criminal. A hunt for the perpetrators of a silver robbery is an exciting affair, and brings the newspapers a lot of profit ; but it is pretty certain that the gang of half-a-dozen who plan and carry out the robbery do far less harm than the gang of fifty detectives who go up and down the country in pursuit of them—bribing, treating to liquor, cajoling, threatening, betraying, and undermining and corrupting the whole social fabric with their knaveries.

I am not proposing to abolish the criminal department of police activity ; but I do insist that we are attributing too much importance to it. Probably for every five policemen in London who act as champions of health and decent living there are one hundred whose duties chiefly consist in the defence of property. Let us reduce the numbers of the latter, and increase the former, and we shall have a considerably better balance of official activity, and perhaps find a margin of the force to dispense with.

Of course when society becomes anything like decently rational and healthy we shall dispense with this institution altogether. Let us hope that this new dispensation is not so far distant.

NON-GOVERNMENTAL SOCIETY.¹

TO recapitulate. We have in the preceding pages a serious indictment of the whole present institution of Law, Police and Punishment. We have seen that it actually creates and gives rise to huge masses of evil—bribery, blackmail, perjury, spying and lying, wrongful accusation, useless and deliberate suffering and cruelty ; that it publicly sanctions and organizes violence, even in extreme forms ; that it quite directly and deliberately supports vast and obvious wrongs in Society—as, for instance, land monopoly ; that it is absurd and self-contradictory in much of its theory and practice ; that (as Herbert Spencer so frequently insists) it paralyzes the folk that submit or trust to it ; and finally, that it is to-day for the most part so antiquated and out of date that (even if this were thought desirable) it might well seem impracticable to patch it up for real human use.

We do not say that these charges cover the whole case, and that there is nothing on the other side to be said in favour of these institutions ; but still, even so, every one must admit that their benefits must be shown to be very great, if they

¹ The main part of this paper was originally published in *Forecasts of the Coming Century*, 1897.

are to compensate for such huge drawbacks and evils. Practically, every one does admit that Law is an evil ; but the defence usually is that it is a necessary evil, that we cannot dispense with it, and that without it disorder, violence and social disruption would ensue.

And yet curiously enough the history of nations and peoples is, on the whole, to contrary effect. Not only have all the early tribes of the world got on and cohered together in order and social amity without any rigid and ponderous system of laws ; but even among the peasant peoples of to-day—like the Irish or the Swedes or the Swiss—where they are still living in moderately primitive conditions, we find the same thing. Law and its operations and institutions occupy but small part in their lives. It is true that Custom is strong among all primitive folk, no doubt as a very necessary backbone or framework to their society ; but Custom is a very different thing from Law. It is law in its inception—when it is yet in a tentative, rudimentary condition ; and however harsh, rigid, or senseless the customs of many savage tribes may be, they are yet easier to alter than when they have become ossified into written Law, with its huge weight of age and ceremony, and the authority of armed men to enforce it.¹

That human societies can subsist without a con-

¹ See below, p. 103. Spencer and Gillen, in their late book, *The Northern Tribes of Australia*, say that there are no chiefs even or headmen among these people ; but the old men constitute an informal council, which punishes "crime" and the breaking of marriage rules, organizes the ceremonies, and from time to time inaugurates reforms.

92 PRISONS, POLICE AND PUNISHMENT

siderable amount of Custom we may well doubt ; but that they can subsist and maintain themselves in good order and vitality without written law and its institutions there is no reason at all to doubt. And when Custom, among a reasonable and moderately advanced people, leaving behind the barbarities of the savage age, takes on a gentler form, and while exercising considerable pressure on individuals is itself fairly plastic and adaptable to the general movements of society—we seem to see in such pressure a force as far superior to Law as life itself is superior to mere mechanism. A vast amount of our social life to-day in all departments of its activity is ruled by Custom, and some of these customs, like those of "society" and fashion, have a very powerful sway. There is no *law* for the recovery of betting debts, yet their non-payment is extremely rare.

Of course, accustommed as we are to "call the policeman" on every emergency, we find it hard to imagine life without this institution ; and our life being largely founded on it, it is so far necessary, and its removal would cause dislocation. That is, since without the police the present spoliation of the poor would not be possible, and the enormous existing inequalities of wealth and poverty could never have been heaped up—without them the society founded on these artificial inequalities could not well be maintained.¹ But to say that because a certain institution is necessary

¹ Though, as all more primitive society shows us, small inequalities and such as arise from natural differences of human industry and capacity will always be welcome.

to build up and retain society in a certain abnormal and unnatural form, therefore society cannot exist without that institution, is the same as to say that because to a Chinese woman of rank foot-bandages are necessary, therefore women generally cannot exist without foot-bandages. We have to realize that our present social forms are as ugly and inhuman as a club foot; and then we shall begin to realize how little necessary are these institutions, like law and police, whose chief concern and office is to retain and defend these forms.

The chief difficulty, then, which arises in people's minds at the thought of a free non-governmental society does not concern its desirability—they are agreed as a rule that it would be desirable—but concerns its practicability. And much of this difficulty is derived from the society of the present. People see, in fact, that an internecine competition for subsistence is the ruling force of life to-day, and the chief incentive to production, and they infer that without government society would dissolve into a mere chaos of plunder on the one hand, and of laziness on the other.¹ It is this difficulty which has first to be removed.

Though it seems a hard thing to say, the outer life of society to-day is animated first and foremost by Fear. From the wretched wage-slave, who rises before the break of day, hurries through squalid streets to the dismal sound of the "hummer," engages for nine, ten, or twelve hours,

¹ Though it must, to be strictly impartial, be pointed out that this difficulty is chiefly felt by those classes who themselves live on interest and in ornamental idleness.

94 PRISONS, POLICE AND PUNISHMENT

and for a pittance wage, in monotonous work which affords him no interest, no pleasure ; who returns home to find his children gone to bed, has his supper, and, worn out and weary, soon retires himself, only to rise again in the morning and pursue the same deadly round, and who leads a life thus monotonous, inhuman, and devoid of all dignity and reality, simply because he is hounded to it by the dread of starvation ;—to the big commercial man, who, knowing that his wealth has come to him through speculation and the turns and twists of the market, fears that it may at any moment take to itself wings by the same means ; who feels that the more wealth he has, the more ways there are in which he may lose it, the more cares and anxieties belonging to it ; and who to continually make his position secure is, or thinks himself, forced to stoop to all sorts of mean and dirty tricks ;—over the great mass of people the same demon spreads its dusky wings. Feverish anxiety is the keynote of their lives. There is no room for natural gladness or buoyancy of spirits. You may walk the streets of our great cities, but you will hear no one singing—except for coppers ; hardly a ploughboy to-day whistles in the furrow, and in almost every factory (this is a fact) if a workman sang at his work he would be “sacked.” We are like shipwrecked folk clambering up a cliff. The waves are raging below. Each one clings by handhold or foothold where he may, and in the panic if he push his neighbour from a point of vantage, it is to be regretted certainly, but it cannot be helped.

But such a state of affairs is not normal. Allowing that the struggle for existence in some degree or form is unavoidable, history still, except at rare crises, presents us with no such spectacle of widespread anxiety ; the study of native races—whom *we* might consider in a state of destitution—reveals no such dominion of dread. I want the reader to imagine for a moment this burden of fear lifted off the hearts of a whole people ; and the result.

Let us imagine for a moment that some good fairy—some transcendental Chancellor of the Exchequer—with a stroke of his wand, has assured to us all not only an old age pension, but a decent provision for all our days of the actual necessities of life (to go no further than that) ; so that for the future no man could feel any serious or grinding anxiety for his own material safety, or that of his family. What would be the result on our actions ?

Perhaps, as many would maintain, nine-tenths of the population would say, “ I’m blessed if I’ll ever do another stroke of work.” Like the organ-grinder who came into a little fortune, and who forthwith picked up an axe and fell upon his organ, shouting as he hacked it to pieces, “ You shall neffer play dat tam *Alabama Coon* any more,” we should feel so sick of our present jobs that we should want to turn our backs on them for ever. Very likely, I should say—and rightly enough too ; for “ work ” in the present day is done under such degrading and miserable conditions by the vast majority of the population that the very best and most manly thing we could do would be to refuse to continue doing it.

96 PRISONS, POLICE AND PUNISHMENT

But let us suppose, since a bare living has been assured to us, and we are in no danger of actual starvation, that we all take a good long holiday, and abstain religiously from doing anything. Suppose that we simply twirl our thumbs in idleness for two, three, four, or six months. Still, is it not obvious that at the end of that time nine-tenths of the population would find sheer idleness appallingly dreary, and that they would *set themselves* to work at some thing or other—to produce objects of use or beauty, either for themselves, or for their families and neighbours, or even conceivably for society at large ; that, in fact, a spontaneous and free production of goods would spring up, followed, of course, by a spontaneous and free exchange—a self-supporting society, based not on individual dread and anxiety, but on the common fulness of life and energy ?

That people relieved from care do spontaneously set themselves to work is sufficiently shown by the case of the well-to-do classes to-day. For these people, though having *everything* provided for them, and not merely the bare necessities which we have supposed, exhibit the most extraordinary and feverish energy in seeking employment. A few decades of years have been quite sufficient to make them feel the utter failure of picnics as an object in life ; and now we are flooded with philanthropic and benevolent societies, leagues, charity organizations, art missions to the poor, vigilance crusades, and other activities, which are simply the expression of the natural energies of the human being seeking an outlet in social usefulness. It

is, of course, to be regretted that owing to the very imperfect education of this class their ideas and their capacities of social usefulness should be so limited. However, this is a defect which will no doubt be remedied in the future. All that concerns us here is to see that since the rich, though in many ways ill-adapted by training and circumstance, do spontaneously take up a life of this kind, there is nothing extravagant in supposing that the average man, surrounded by so many unfulfilled needs, might do the same.

And if any one still doubts let him consider the thousands in our large towns to-day who would give their ears to be able to get out and work on the land—not so much from any prospect of making a fortune that way, as from mere love of the life ; or who in their spare time cultivate gardens or plots or allotments as a hobby ; or the thousands who when the regular day's work is over start some fresh little occupation of their own—some cabinet-making, wood-turning, ornamental iron work or whatnot ; the scores of thousands, in fact, that there are of *natural* gardeners, cabinet-makers, ironworkers, and so forth ; and then think how if they were free these folk would sort themselves spontaneously to the work they delighted in.

Thus it appears to be at least *conceivable* that a people not hounded on by compulsion nor kept in subjection by sheer authority, would set itself spontaneously to produce the things which it prized. It does not, of course, at once follow that the result would be perfect order and harmony.

98 PRISONS, POLICE AND PUNISHMENT

But there are a few considerations in the positive direction which I may introduce here.

In the first place, each person would be guided in the selection of his occupation by his own taste and skill, or at any rate would be guided by these to a greater extent than he is to-day; and on the whole would be more likely to find the work for which he was fitted than he is now. The increase in effective output and vitality from this cause alone would be great. While the immense *variety* of taste and skill in human beings would lead to a corresponding variety of spontaneous products.

In the second place, the work done would be useful. It is certain that no man would freely set himself to dig a hole, only to fill it up again—though it is equally certain that a vast amount of the work done to-day is no more useful than that. If a man were a cabinet-maker and made a chest of drawers, either for himself or a neighbour, he would make it so that the drawers would open and shut; but nine-tenths of the chests made on commercial principles are such that the drawers will neither open nor shut. They are not meant to be useful; they are meant to have the semblance of being useful; but they are really made to *sell*. To sell, and by selling yield a profit. And for that purpose they are better adapted if, appearing useful, they turn out really useless, for then the buyer must come again, and so yield another profit to the manufacturer and the merchant. The waste to the community to-day arising from causes of this kind is enormous; but it is of no moment as long as there is profit to a certain class.

Work in a free society would be done because it was useful. It is curious, when you come to think of it, that there is no other conceivable reason why work should be done. And of course I here include what is beautiful under the term useful,—as there is no reason why one should separate what satisfies one human need, like the need of beauty, from another human need, like the need of food. I say the idea of work implies that it is undertaken because the product itself satisfies some human need. But strangely enough in Commerce that is not so. The work is undertaken in order that the product may *sell*, and so yield a profit ; that is all. It is of no moment *what* the product is, or whether bad or good, as long as it fulfils this one condition. And so the whole spirit of life and industry in the other society would be so utterly different from that of the present, that it is really difficult for us to compare the results. But it is not difficult to see that if on the principles of freedom there was not so *much* produced in mere quantity, and folk did not (as may indeed be hoped) work so many hours a day as now, still, the goods turned out being sincere and genuine, there would really be far more value shown in a year than on the strictly commercial system.

In the third place, it follows—as William Morris so constantly maintained—that “work” in the new sense would be a pleasure—one of the greatest pleasures undoubtedly of life ; and this one fact would transform its whole character. We cannot say that now. How many are there who take real pleasure and satisfaction in their daily labour ?

100 PRISONS, POLICE AND PUNISHMENT

Are they, in each township, to be counted on the fingers? But what is the good of life if its chief element, and that which must always be its chief element, is odious? No, the only true economy is to arrange so that your daily labour shall be itself a joy. Then, and then only, are you on the safe side of life. And, your work being such, its product is sure to become beautiful; that painful distinction between the beautiful and the useful dies out, and everything made is an artistic product. Art becomes conterminous with life.

Thus it will be observed that whereas the present society is founded on a system of Private Property, in which, almost necessarily, the covetous hard type of man becomes the large proprietor, and (supported by law and government) is enabled to prey upon the small one; and whereas the result of this arrangement is a bitter and continuous struggle for possession, in which the motive to activity is mainly Fear; we, on the contrary, are disentangling a conception of a society in which Private Property is supported by no apparatus of armed authority, but as far as it exists is a perfectly spontaneous arrangement, and in which the main motives to activity are neither Fear nor greed of Gain, but rather Community of life and Interest in life—in which, in fact, you undertake work because you *like* the work, because you feel that you can do it, and because you know that the product will be useful, either to yourself or some one else!

How Utopian it all sounds! How absurdly simple and simple-minded—to work because you

NON-GOVERNMENTAL SOCIETY 101

like the work and desire the product. How delightful if it could be realized, but, of course, how "unpractical" and impossible.

Yet is it really impossible? From Solomon to Dr. Watt we have been advised to go to the Ant and the Bee for instruction, and lo! they are unpractical and Utopian too. Can anything be more foolish than the conduct of these little creatures, any one of whom will at any moment face death in defence of his tribe? while the Bee is absolutely so ignorant and senseless, that instead of storing up the honey that it has gathered in a little cell of its own, with a nice lock and key, it positively puts it in the common cells, and cannot distinguish it from the stores of the others. Foolish little Bee, the day will surely come when you will bitterly rue your "unthrifty" conduct, and you will find yourself starving while your fellow-tribesmen are consuming the fruits of your labour.

And the human body itself, that marvellous epitome and mirror of the universe, how about that? Is it not Utopian too? It is composed of a myriad cells, members, organs, compacted into a living unity. A healthy body is the most perfect society conceivable. What does the hand say when a piece of work is demanded of it? Does it bargain first for what reward it is to receive, and refuse to move until it has secured satisfactory terms, or the foot decline to take us on a journey till it knows what special gain is to accrue to *it* thereby? Not so; but each limb and cell does the work which is before it to do, and (such is the Utopian law) the *fact of its doing the work* causes

the circulation to flow to it, and it is nourished and fed in proportion to its service. And we have to ask whether the same may not be the law of a healthy human society? Whether the fact of a member doing service (however humble) to the community would not be quite sufficient to ensure his provision by the rest with all that he might need? Whether the community would think of allowing such an one to starve any more than a man would think of allowing his least finger to pine away and die? Whether it is not possible that men would cease to feel any anxiety about the "reward of their labour"; that they would think first of their work and the pleasure they had in doing it, and would not doubt that the reward would follow?

For indeed the instinct to do anything which is obviously before you to do, which is wanted, and which you *can* do, is very strong in human nature. Even children, those rudimentary savages, are often extremely proud to be "useful," and it is conceivable that we might be sensible enough, instead of urging them as we do now to "get on," to make money, to beat their fellows in the race of life, and by climbing on other folk's heads to ultimately reach a position where they would have to work no longer,—that we might teach them how when they grew up they would find themselves members of a self-respecting society which, while it provided them *gratis* with all they might need, would naturally expect them in honour to render some service in return. Even small children could understand that. Is it quite inconceivable that

a society of grown men and women might act up to it ?

But it is really absurd to argue about the possibility of these things in human society, when we have so many actual examples of them before our eyes. Herman Melville, in that charming book *Typee*, describes the Marquesas Islanders of the Pacific, among whom he lived for some time during the year 1846. He says : " During the time I lived among the Typees no one was ever put upon his trial for any offence against the public. To all appearances there were no courts of law or equity. There was no municipal police for the purposes of apprehending vagrants or disorderly characters. In short, there were no legal provisions whatever for the well-being and conservation of society, the enlightened end of civilized legislation." Nevertheless, the whole book is a eulogy of the social arrangements he met with, and with almost a fervour of romance in its tone ; and yet, like all his description of the natives of the Pacific Islands, undoubtedly accurate, and well corroborated by the travellers of the period. An easy communism prevailed. When a good haul of fish was made, those who took part in it did not keep the booty to themselves, but parcelled it out, and sent it throughout the tribe, retaining only their proportionate share. When one family required a new cabin, the others would come and help to build it. He describes such an occasion, when, " at least a hundred of the natives were bringing materials to the ground, some carrying in their hands one or two of the canes which

were to form the sides, others slender rods of hibiscus, strung with palmetto leaves, for the roof. Every one contributed something to the work; and by the united but easy labours of all the entire work was completed before sunset."

Similar communistic habits prevail, of course, through a vast number of savage tribes, and indeed almost anywhere that the distinctively commercial civilization has not set its mark. They may be found close at home, as in the little primitive island of St. Kilda, in the Hebrides, where exactly the same customs of sharing the hauls of fish or the labours of housebuilding exist to-day,¹ which Melville describes in *Typee*; and they may be found all along the edges of our civilization in the harvesting and house-warming "bees" of the backwoods and outlying farm-populations. And we may fairly ask, not whether such social habits are possible, but whether they are not in the end the only possible form; for surely it is useless and absurd to call these modern hordes of people, struggling with each other for the means of subsistence, and jammed down by violent and barbaric penal codes into conditions which enforce the struggle, *societies*; as it would be absurd to call the wretched folk in the Black Hole of Calcutta a society. If anyone will only think for a minute of his own inner nature he will see that the only society which would ever really satisfy him would be one in which he was perfectly free, and yet bound by ties of deepest trust to the other members; and if he will think for another minute he

¹ See Chapter XI. of *Poverty and the State*, by H. V. Mills.

will see that the only conditions on which he could be perfectly free (to do as he liked) would be that he *should* trust and care for his neighbour as well as himself. The conditions are perfectly simple; and since they have been more or less realized by countless primitive tribes of animals and men, it is surely not impossible for civilized man to realize them. If it be argued (which is perfectly true) that modern societies are so much more complex than the primitive ones, we may reply that if modern man, with his science and his school-boards, and his brain cultivated through all these centuries, is not competent to solve a more complex problem than the savage, he had better return to savagery.

But it is getting time to be practical.

Of the *possibility* of a free communal society there can really, I take it, be no doubt. The question that more definitely presses on us now is one of transition—by what steps shall we, or can we pass to that land of freedom?

We have supposed a whole people started on its journey by the lifting off of a burden of Fear and anxiety; but in the long, slow ascent of evolution sudden miraculous changes are not to be expected; and for this reason alone it is obvious that we can look for no very swift transformation to the communal form. Peoples that have learnt the lesson of "trade" and competition so thoroughly as the modern nations have—each man fighting for his own hand—must take some time to unlearn it. The sentiment of the common life, so long nipped and blighted, must have leisure to grow and expand again;

106 PRISONS, POLICE AND PUNISHMENT

and we must acknowledge that—in order to foster new ideas and new habits—an intermediate stage of definite industrial organization will be quite necessary. Formulae like the "nationalization of the land and the instruments of production," though they be vague and indeed impossible of *rigorous* application, will serve as centres for the growth of the sentiment. The partial application of these formulae will put folk through a lot of useful *drilling* in the effort to work together and for common ends.¹

If I might venture (taking only the agencies which we see already around us at work) to sketch out how possibly the transitions to the new society will be effected it would be somewhat as follows.

In the first place the immense growth of the unemployed—which is so marked a feature of the day, and which is due to the monopoly of land and machinery in the control of the few²—is already

¹ When one looks sometimes at the awful residue and dregs which are being left as a legacy to the future by our present commercial system—the hopeless, helpless, drunken, incapable men and women who drift through London and the country districts from workhouse to workhouse, or the equally incapable and more futile idlers in high places, one feels that possibly only a rather stringent industrial organization will enable the coming society to cope with these burdens.

² A moment's thought shows that as machinery perfects and perfects itself there is a tendency for fewer workers to produce more goods or wealth. The balance of increased wealth goes to the profit-receiving classes; and so there is a double result, namely, the increase of the wealthy unemployed, and the increase of the unemployed workers. The increase of these two classes may not go on simultaneously, and there may and must be fluctuations on both sides; but the general tendency is clear.

forcing the hand of the nation to the development of farm-colonies, land-reclamations, and other

It might, of course, be counteracted by shorter hours of labour and increased wage, which by bringing a greater number of workers in under better conditions would immensely improve their lot, and at the same time by reducing profits would clean up and improve the lives of the wealthy; but as the entire tendency of the present system is the other way (in order to keep *up* profits), this double shrinkage of employment must go on—as long, in fact, as the system goes on, and until the unemployed problem *forces* a solution.

The unemployed (at the lower end of the scale) break roughly into three classes. (1) The Poor. These are the genuine workers who *cannot get employment*; and they form a large class, though their numbers, of course, fluctuate greatly with the fluctuations of trade. In general they suffer more, both mentally and physically—in their terrible struggle for a livelihood—than any other class in the nation. (2) The Pauper and the Vagrant. These are they who, having *given up the struggle for work*, or being constitutionally averse or incapable, resign themselves to a life of dependence and parasitism. When a worker falls from class one into class two, it is usually a period of great agony with him—the surrender of his home, his *status*, his independence, etc.—but having once fairly passed into class two, he rarely returns. (3) The Criminal. These are they who also having passed out of class one, instead of becoming passive parasites, take to a life of deliberate attack and warfare on society.

When we consider that Mr. Charles Booth in 1891 found that about thirty per cent. of the entire population of London were unable to obtain the necessaries for a sound livelihood; and that Mr. B. S. Rowntree some ten years later gave about twenty-nine per cent. for the corresponding figures in the city of York, we realize what a terrible problem this of unemployment is becoming, and how it must inevitably force modern society into great new organizations and transformations. At present the obvious thing to do is simply to organize a graduated and continuous scheme of farm-colonies and industrial production for (1) prisoners, (2) paupers, and (3) the ordinary unemployed.

108 PRISONS, POLICE AND PUNISHMENT

big industrial schemes. These, partly carried on by voluntary contribution and enterprise, and partly by municipal and State authority, are already leading to a socialisation (in some degree) of land and machinery. At the same time the rolling up of companies into huge and huger trusts is making the transference of industries to public control and to public uses, daily more obviously necessary and, in a sense, more easy to effect.

On the other hand, the Trade Unions and Co-operative Societies by the development of productive as well as distributive industries, and by the interchange of goods with each other on an ever-growing scale, are bringing about a similar result. They are creating a society in which enormous wealth is produced and handled not for the profit of the few, but for the use of the many ; a *voluntary* collectivism working within and parallel with the official collectivism of the State.

As this double collectivism grows and spreads, profit-grinding will more and more cease to be a lucrative profession. Though no doubt great efforts will be made in the commerical world to dis-countenance the public organization of the unemployed (because this will cut away the ground of cheap labour on which commercialism is built), yet as we have seen, the necessity of this organization has reached such a point that it can no longer be denied. And as it comes in more and more, it will more and more react on the conditions of the employed, causing them also to be improved. Besides we are fain to hope that something else of which we see growing signs on every hand, will also come in—

namely a new sense of social responsibility, a new reading of religion—which will help on and give genuine life to the changes of which we speak. If so, it might not be so very long before the spread of employment, and the growing security of decent wages, combined with the continual improvement of productive processes and conditions, would bring about a kind of general affluence—or at least absence of poverty. The unworthy fear which haunts the hearts of nine-tenths of the population, the anxiety for the beggarly elements of subsistence, would pass away or fade in the background, and with it the mad nightmarish competition and bitter struggle of men with each other. Even the sense of Property itself would be alleviated. To-day the institution of Property is like a cast-iron railing against which a human being may be crushed, but which still is retained because it saves us from falling into the gulf. But to-morrow, when the gulf of poverty is practically gone, the indicating line between one person and another need run no harsher than an elastic band.¹

It is possible that some such general rise in well-being, due to a few years of wise and generous organization of labour, may play the part of the good fairy in the transformation-scene of modern society.

¹ This alleviation indeed is already in some curious ways visible. Forty years ago the few dressed in broadcloth, the masses in fustian; but now that silk is made out of wood-pulp, and everybody can dress and does dress in the latest fashion, it is no distinction to have fine clothes. Similarly with books, travel, and a hundred other things. What is the good of being a millionaire when the man with three pounds a week can make almost as good a show as you?

110 PRISONS, POLICE AND PUNISHMENT

With the dying-out of fear and grinding anxiety and the undoing of the frightful tension which to-day characterizes all our lives, Society will spring back nearer to its normal form of mutual help. People will wake up with surprise, and rub their eyes to find that they are under no necessity of being other than human.¹

Simultaneously (i.e. with the lessening of the power of money as an engine of interest and profit-grinding) the huge nightmare which weighs on us to-day, the monstrous incubus of "business"—with its endless Sisyphus labours, its searchings for markets, its displacement and destruction of rivals, its travellers, its advertisements, its armies of clerks, its banking and broking, its accounts and checking of accounts—will fade and lessen in importance; till some day perchance it will collapse, and roll off like a great burden to the ground! Freed from the great strain and waste which all this system creates, the body politic will recover like a man from a disease, and spring to unexpected powers of health.

Meanwhile in the great industrial associations, voluntary and other, folk will have been learning the sentiment of the Common Life—the habit of acting together for common ends, the habit of feeling

¹ At the same time it must not be blinked that in the growth of the modern millionaire we are face to face with a serious evil. Now that any man endowed with a little low cunning, and tempted by self-conceit and love of power, has a good chance of making himself enormously rich, society is in danger of being ruled by as mean a set of scoundrels as ever before in history. And nothing less than a great transformation of our moral and social standards will enable us to cope with this danger.

NON-GOVERNMENTAL SOCIETY III

together for common interests—and once this has been learnt, the rest will follow of its own accord. We need not fear that State-organization will run to the bitter end so often prophesied—nor is there any danger of poetry and ginger-beer being converted into government monopolies. But it may perhaps be hoped that it will go far enough to form the nucleus of immense growths of *voluntary* Socialism, and to give (as government action does) a very distinct direction to the current of public opinion.

In the course of these changes, moving always towards a non-governmental and perfectly voluntary society in the end, it is probable that some Property-founded institutions, like the payment of labour for wages, though not exactly ideal in their character, will continue for a long period. It has to be remembered that there is not the smallest chance of any "ideal," pure and simple, of society being at any time absolutely realized. Besides, an ideal is at best an awkward thing. For while it is obviously either Smith's ideal or Brown's ideal, it is pretty certain that Brown's ideal would not suit Smith, nor Smith's ideal suit Brown. So that while we can see plainly enough the more communal direction in which society is trending we may both hope and fairly expect that the resulting form will not be the exact ideal of any party; but will be broad enough and large enough to include an immense diversity of institutions and habits, as well as a considerable survival of the social forms of to-day. It may perhaps be said that in some ways a generous wage-payment convention (as for instance sketched in the last chapter of Carruther's *Commercial and Communal*

112 PRISONS, POLICE AND PUNISHMENT

Economy) on a thoroughly democratic basis, gives more freedom than a formless Anarchism in which each one takes "according to his needs,"—simply because under the first system *A* could work two hours a day and live on the wage of two, and *B* could work eight and live on the wage of eight, each with perfect moral freedom—whereas if there was no wage system, *A* (however much he might wish to loaf) would feel that he was cheating the community—and the community would think so too—unless he gave his eight hours like everybody else.¹

The great point however to bear in mind in all this matter is that though the Cash-nexus may and no doubt will linger on for a long time in various forms of Wages, Purchase, Sale, and so forth, it must inevitably with the changing sentiment and conditions of life lose its cast-iron stringent character, and gradually be converted into the elastic cord, which while it may indicate a line of social custom will yield to pressure when the need arises. Private Property will thus lose its present virulent character, and subside into a matter of mere use or convenience; monetary reckonings and transfers, as time goes on, will seem little more than formalities—as to-day between friends.

Finally, Custom alone will remain. The subsidence of the Property feeling will mean the subsidence of brute-force Law, for whose existence Property is

¹ It is difficult also to see how things like railways and the immense modern industries (if these survive) could be carried on without some such system of wage-payment and the definite engagement to fulfil certain work which it carries with it.

mainly responsible. The peoples accustomed to the varied activities of a complex industrial organism, will still—though not suffering from the compulsion either of hunger or of brute authority—continue through custom to carry on those activities, their Reason in the main approving.

Custom will remain—slowly changing. And the form of the Societies of the future will be so far more vital and organic than they have been or could be under the rigid domination of Law.

APPENDICES

APPENDIX A

THE SOLITARY SYSTEM

THOUGH the Solitary System, in its harsher sense, is now on the wane, and Prison Reform is moving in the direction of associated labour, and even some degree of social intercourse for prisoners, yet in this country the system has taken such deep root, and the ideas belonging to it have so dominated men's minds, that it will probably be a long time before we are free from its tradition. It may be worth while therefore to say a few words about its history and working.

It was as far back as 1842 that Sir James Graham (moved no doubt by the evils of the herding together and contamination of prisoners inseparable from the old system, or want of system) originated the idea of a solitary system for convicts—which certainly in its main outlines was advanced and not incompatible with modern ideas. “The convict was to undergo eighteen months’ solitary imprisonment, but he was to be freely visited by chaplains and prison officials ; he was to be trained in a productive industry ; he was to be subjected to a progressive system of education on the class-system ;

lectures were to be given him in the prison chapel, etc." (See *Report of Departmental Committee*, 1895, p. 26.)

This broad and generous scheme, however, was never carried out ; but instead, and unfortunately, the single feature in it of separate confinement was retained ; and this, robbed of all its reforming and hope-inspiring elements, was simply converted into an engine of the most formidable and deadly *punishment*. A system of isolated imprisonment was approved by a Select Committee of the House of Commons in 1856 ; and was embodied in the Penal Servitude Acts of 1857. By the Prison Act of 1877 all local prisons were placed under the authority of a Central Board of Commissioners ; and a new Prison Department was created, which was directed towards an absolute system of uniformity and of mechanical and rigid discipline.

That the results of all this were very far from satisfactory is sufficiently proved by the very weighty words of the Departmental Committee of 1895 : " The great and, as we consider, the proved danger of this highly centralized system has been, and is, that while much attention has been given to organization, finance, order, health of the prisoners, and prison statistics, the prisoners have been treated too much as a hopeless or worthless element of the community, and the moral as well as the legal responsibility of the prison authorities has been held to cease when they pass outside the prison gates. The satisfactory sanitary conditions, the unbroken orderliness of prison life, economy, and high organization are held, and justly held, to prove good

administration. *But the moral condition in which a large number of the prisoners leave the prison, and the serious number of re-committals have led us to think that there is ample cause for a searching inquiry into the main features of prison life.*"

About this system—of isolation in the life of the prisoners and centralized mechanical uniformity in the conduct of the prisons—for which Sir Edmund du Cane appears to have been mainly responsible, there was an atmosphere of whitewash, so to speak, and of machine-like respectability which clouded and disguised from the public at large the subtle and really terrible cruelty of it. No doubt there were barbarities in the previous state of affairs—in the contaminations and filth arising in old days from the herding of prisoners together ; in the frequency of corporal punishment ; in the irresponsible power of warders and prison officials, and so forth ; barbarities which certainly needed reform, but which from their obvious character would naturally appeal to people's imagination. But it now appears probable that the "solitary" system, and all that goes with it, has been, in a more refined way, quite as inhuman as that which it supplanted.

Few people perhaps realize this. It has been the fashion to vaunt our prisons over those of foreign countries, to boast that there was next to no violence connected with them, that the prisoners were not at the mercy of individual officials, but were controlled by a system, that all was regulated and disciplined, that there were no evil communications to corrupt good manners, and so forth ; and in this cloud of negative attributes it was forgotten that there was

hardly one positive or redeeming feature in the system ; that it meant a life devoid of any touch of humanity, deliberately shorn of all that might waken or interest the mind, without a suggestion of any influences that might soften the hard or heal the broken heart—nothing but silence, solitude, desertion by all the world, absolute monotony and hopelessness, and the systematic starvation of both body and mind.

It is in the last two points—which indeed reach a perfect refinement of cruelty—that the gist of the method lay, and still largely lies—the *systematic* starvation of both body and mind. All the other details flow from and depend on this. And what a nucleus has this been for the treatment of criminals by a civilized nation—the denial to them of every germ or seed of possible growth to better things, physical, mental, or moral ! The author of the system himself describes such an imprisonment as “ an artificial state of existence absolutely opposed to that which nature points out as the condition of mental, moral, and physical health ” ; and yet, knowing this, he appears to have deliberately introduced and upheld it ! Think of a nation deliberately taking its weak, its half-witted, its ill-born, its children of the gutter, of drink and of extreme poverty—for of such stock are the majority of criminals—and then trying systematically what amount of added starvation of body and mind these unfortunates could bear.

After repeated experiments and trials—in the course of which many prisoners went insane—it was found that nine months was the longest period of

solitary confinement which could well be endured ; and accordingly *every* prisoner, from that time forward until the passing of the Prison Act of 1898, had to take the first nine months of his sentence in the solitary cell. That is to say, everyone to begin with was put to about the severest strain that average human nature can stand, in the direction of the enfeeblement of his body and mind.

Few people pause to think what these things mean. To be confined in a bare cell, with nothing but a stool to sit upon, for nearly twenty-three hours out of the twenty-four (for exercise and prayers occupy little more than an hour), the mind turned in upon itself, gnawing itself in monotony and desperation, the stomach gnawing itself with hunger, no sign or word from any friends or relatives, no look of kindness or sympathy from any one, no chance of doing or showing a kindness towards any one ; if work has to be done, that work probably consisting in turning the crank or picking oakum, work brutalizing and useless, from which every soul with a spark of manhood in it must revolt ; and this to go on for days and weeks and months ; could anything be imagined more debasing and stunting, more calculated to produce the hardened and hopeless "habitual criminal" ?¹ Nor is it

¹ The term of solitude is now reduced to six months, and is in some degree also alleviated by occasional visits from chaplain or official visitor, and by the gradual introduction of more rational industries than oakum-picking. Nevertheless, it must be remembered that a great portion of the above and following descriptions is still quite applicable. Mrs. Maybrick says in her *Own Story*, lately published, "No one can realize the horror of solitary confinement who has not experienced it."

only that this system cuts off all healthy human intercourse—all social interest and feeling—the very thing of all others that the criminal *needs* ; but it also, with diabolical ingenuity, cuts him off from all the tender and redeeming and sweetening influences of Nature. It is a fact that, even now, in most prisons the windows (too small already for the needful amount of light) are placed so high up and in such a position that the inmate of the cell cannot see *anything* out of them. In most cases they are actually made of ground glass. Let alone the things of earth, he is not even allowed to see the sky ; not a cloud passing, not a bird flying through the open blue (which might serve to remind him of the world he has left), not the sun by day or the moon by night is he allowed to look upon. All these might awake in his soul tender and sweet and sane impulses and memories, and all such things must be killed out. Yes, truly these prisons are outwardly clean and decent and orderly : but inwardly what are they but whitened sepulchres full of dead men's bones ?

When the prisoner condemned to penal servitude has served his "solitary" period, he is removed to a convict prison ; and here he is a little better off. He has work to do which has some show of usefulness in it, sometimes he is taught a trade ; he has rather better food ; he is allowed a few books to read which are not merely "religious" books ; and the nature of his work allows him sometimes stolen snatches of conversation with a fellow-convict. But the root of the system is the same. It is still the starvation-of-body-and-mind system. The follow-

ing extracts from a letter received in 1897 from such a convict will show how cruelly it works. He says : " Existence here drags on in such a dull and excessively narrow circle at the best, and at times so wearily and monotonously, that one is driven to find compensation amongst memories of the day that is past and the hopes, dreams and plans of the one that is coming, while ignoring as far as possible this long intermediate night-time. I cannot tell you how much I long at times to feel again the influences of forest and field, of mountain and stream and ocean, or to see again a starlit sky. . . . How intensely one feels the want of some different human relationship to that of warder and convict (all other communication with one's fellows is very strictly prohibited). How much one would value the society of authors with whom one is in sympathy, and from whom one would gain some mental stimulus. What craving one occasionally has for recreation, for opportunities to expand the various sides of one's nature, so cramped and benumbed by the force of these regulations and surroundings, to join in the life and motion of the real World, to live again in fact. I can give you no idea of the force such longings have at times or describe the sea of thoughts in which at other times I find myself immersed. . . . I still hope to get through with the minimum of mental and physical injury." Here one seems to see a youthful nature trying to grow and expand and throw out feelers towards the light, and ruthlessly deprived of anything which might possibly feed and encourage and nourish that higher life. Nor is it needful to point out how one must

read between the lines of such a letter, written under the eyes of prison-officials and without a thought of publicity.

In an interview with John Daly, published in the *Daily Chronicle* of September 12, 1896, the ex-convict is reported to have said: "I don't know any language to describe the horrors of penal servitude. You are virtually in a living tomb—cut off from everything, the only human sounds you hear being hard orders and words from the warders. Never a touch of kindness, never a glimpse of humanity, apart from a rare visitor and an occasional letter." . . . "Then the prison system begins to tell on you—gradually, but surely—and after a time it has set its mark on you both physically and mentally. The scanty diet, the surroundings, the treatment, the utter desolation—all these gather round you, and you feel as if you were being enveloped by a shroud." . . . "I have known a prisoner get bread and water for simply saying in a whisper to a companion, 'How are you?' The officers had seen his lips move while he was trying to whisper this harmless communication. How one pines in those dead-houses to be allowed to move one's tongue—to say the most innocent word to another human being." Of the kind of desperation of suffering that this life at last induces, Daly says: "Often when I have returned to my cell I have lain down on the hard floor, prostrate mentally as well as physically. The nagging, the ordering about, the mental kicking and hammering, so to speak, crush you to a pulp. I really cannot describe it all; I loathe to think of it." And the prisoner whose

letter I have quoted from above, on one occasion used much the same expression to me, saying, "There is nothing to interest the mind ; I think the old thoughts which I thought when I first came in, over and over and over again, till I feel inclined to dash my head against the wall and have done with it all."

Of the gradual effect of the Solitary System on the mind in the way of inducing hallucinations and partial insanity, there was at one time a good deal of talk—especially perhaps about the year 1895 in connexion with the Irish prisoners at Portland. And there has, too, been some official denial. In the Annual Report for 1897 of the Commissioners of Prisons and Directors of Convict Prisons, reference is made to the subject, and the Report says : "We are not able to concur in the truth of these allegations. We do not believe that sentences of penal servitude are conducive to insanity or to mental degeneration. There is nothing in the nature of the treatment to predispose to such a result—the life is healthy, the diet sufficient, the work not too severe." And it then appeals to the "unanimous testimony" of the Governors and Medical-officers of all convict prisons to the same effect. There is little doubt that *convict* prisons (which are the prisons here referred to) are not so bad in this respect as the ordinary prisons—the conditions of life and labour in them being much healthier. But even so, a little consideration of the conduct of these institutions shows a strong *prima facie* case against the Report. And with regard to the local prisons, in which of course the weight of the first

nine months' solitude fell (and of the first six months now), there can be little doubt that the allegations are largely true. The mere fact mentioned above, of the term having been reduced to six months on account of the strain, must convince us of this—let alone common sense and the obvious nature of the case.¹

Of course, one instance proves little, but as an example of the kind of effect which the Solitary System tends to produce on a moderately sensitive mind, a little pamphlet entitled *The Ghosts of Chelmsford Jail* is well worth reading. The author was sentenced in 1892 to eighteen months' hard labour. He says what is in some ways true: "The condition of poor wretches condemned to a *short* term of hard labour is far more pitiable" than that of long-term prisoners. "Six months prisoners get the same diet at the beginning of their sentence as those who have a long term of hard labour [i.e. a fairly good diet]. Prisoners who have only a 'month hard' have 8 ozs. of bread for breakfast, the same for supper, and 1½ pint of skilly for dinner. This is for the first week of their confinement; for the rest of the month there is only a slight improvement. For instance, the dinner on two days a week is 8 ozs. of bread and 8 ozs. of potatoes. And poor wretches, doomed to a month's hard labour for the crime of sleeping in the open

¹ "Such a punishment (six months' solitary) is inexpressible torture to both mind and body. I speak from experience. The torture of continually enforced silence is known to produce insanity or nervous breakdown more than any other feature connected with prison discipline" (*Mrs. Maybrick's Own Story*, p. 81; see also p. 86).

air, or begging a morsel of bread, have to undergo the tread-mill on this diet ! Is it any wonder that a short sentence of hard labour is often a sentence of death ! ”

After a month on the treadmill (at Pentonville) the author tells us that he was confined to his cell with three or four pounds of oakum to pick daily —a task which he found, at first at any rate, very difficult and painful, his nails being broken and his hands torn and bleeding ; and which, like the treadmill, was especially exasperating from its utter uselessness. He did not get on very well at it, and was once or twice brought before the Governor. Then he was transferred to Chelmsford ; and of his experiences there gives us some account.

“ B——, who presided over the convicts, was formidable in appearance, very dark, with black eyes and hair, the face of a bulldog, a true jailer, sullen and silent. He had a habit of tilting his cap over his eyes when angry, which filled the heart of a prisoner with terror. He could say more with his expressive silence than O—— with all his bullying. O—— was not pleased with my performance with the oakum, and the consequence was, after a fortnight's bullying, I was put under B——, who looked after the making of mail bags, a task performed by the convicts and long-term prisoners. I shifted from my cell at the bottom to one at the top of the prison.

“ I was not a success with the mail bags, and was put back on oakum with some others. O—— bullied more than ever, and finally I was reported, and got a day's bread and water. This punishment is

administered by depriving the prisoner of his bed and work and his books, with the exception of the Bible.

"The food consists of 2 ozs. of bread for breakfast and supper, and 4 ozs. for dinner. Still you are supplied with plenty of water! I found the Bible a great consolation under the circumstances. I read all about the siege of Samaria and women devouring their children.

"By this time I had been nearly four months in prison on starvation diet, and this bread and water was the last straw. I felt so weak I could hardly crawl along. But I had three weeks to wait for a larger diet. One day I heard a conversation between the Chief Warder and the Doctor. 'You had better give him more to eat,' said the doctor, 'or he will break down.' 'Don't you think he had better wait,' said his humane colleague, 'till he is entitled to a fuller diet—it is only three weeks?' 'No; he must have some more food,' said the doctor. 'I think he'd better wait,' replied the Chief Warder. And the voices died away. Needless to say, I got no more food."

The result of all this was what might easily be expected—the prisoner's mind gave way. He began to hear voices—voices of his friends, voices of warders, talking about him in an excited way; voices of newsboys shouting his name in connexion with their papers; then one night there came "the voice of a woman, singing, accompanied by the strumming of a guitar." Sometimes all this "was varied by a monotonous prison chant, in which the same words were repeated with maddening reitera-

tion. If I mentioned the name of a friend in my musings in my cell I was assailed with questions about him, and the vilest language and the foulest mouths that you hear on lips of ruffians in the slums of a great city were heaped upon me. I can never forget the terrible agony of that long and fearful winter."

Finally, it seems that the doctor declared that he was suffering from delusions, and he was sent into the Infirmary. But perhaps the most remarkable and pathetic part of the whole story is that to the last the man was unable to tell whether these things *were* delusions or whether they were tricks played upon him by the warders ; and in the pamphlet itself he leaves this open—though it is obvious that, with possibly one or two exceptions, the former is the true explanation. In this way the reading of the pamphlet enables one to realize very vividly the states of mind through which a man actually passes when the privations begin to tell upon his brain, and in which at last it becomes impossible for him to distinguish between real events and his own hallucinations.¹

Of the frequency of insanity, more or less per-

¹ The following extract from a letter, received in 1895 from a convict at Dartmoor, points in the same direction. The allusion to madness, it must be noted, was quite unprovoked by anything in the letter to which it was a reply. He had simply been asked whether he had any books to read. Being a foreigner, the originality of his grammar must be excused ! " We have any books to read, and I really wonder how you can think we have none ; for if we had no books to read, how greater the number of mads would it be ? It is not quite madness, it is something like idiocy or imbecility, coming from the

manent, induced by the Solitary System, there can surely—notwithstanding official denials—be little doubt. Of course, as the Report of 1895 points out: “The average prisoner in height, weight, strength, and *mental condition* is markedly below the average of the outside population.” It is sufficiently obvious that under the conditions described above, a large percentage of weak-minded prisoners must become permanently insane, while others, as the Report says, “spend their lives in circulating between the prison, the asylum, and the workhouse.” But that it is not only the weak-minded who suffer, the cases of the Irish prisoners already mentioned, and many others which could be cited, abundantly show.¹

Mr. Oscar Wilde, who would be well qualified to judge about such a matter, said in his letter to the *Daily Chronicle* of May 28, 1897: “Let me draw attention to another terrible thing that goes on in English prisons, indeed in prisons all over the world where the system of silence and cellular confinement is practised. I refer to the large number of men who become insane or weak-minded in prison.” He then goes on to give an instance which had come under his own observation.

want of exercising the mind. We may hear fine sermons, hymns, prayers and such like, but, alas! sad to say, all that for this sickness is in vain. There is something saying—

Ainsi si de parler le pouvoir m'est ôté,
Pour moi, j'aime autant perdre aussi l'humanité,
Et changer mon essence en celle d'une bête.”

¹ In fact, the danger itself (only too evident) of becoming insane gives birth to a terror which seizes and paralyzes just the most intelligent and sensitive minds.

Another thing to which Mr. Wilde refers in the same letter is the treatment of children and young things. If the machine-system of our prisons is terrible to the adult, what must it be to the child, who can understand personal severity or even a blow, but to whom silence and loneliness and cold inhumanity are so peculiarly heartrending.¹ "The terror," says Wilde, "that seizes and dominates the child, as it seizes the grown man also, is of course intensified beyond power of expression by the solitary cellular system. Every child is confined to its cell for twenty-three hours out of the twenty-four. This is the appalling thing. To shut up a child in a dimly-lit cell for twenty-three hours out of the twenty-four is an example of the cruelty of stupidity.

. . . The food that is given to it consists of a piece of usually badly-baked prison bread and a tin of water for breakfast at half-past seven. At twelve o'clock it gets dinner, composed of a tin of coarse Indian meal 'stirabout,' and at half-past five it gets a piece of dry bread and a tin of water for its supper. . . . Any one who knows anything about children knows how easily a child's digestion is upset by a fit of crying, or trouble and mental distress

¹ The case of Warder Martin will be remembered, who was dismissed from Reading Prison, partly on account of his having given some sweet biscuits to a little boy just sentenced, who was crying with hunger and misery. This may be compared with the case mentioned by John Daly in the *Chronicle* interview, "the case of a warder who was fined eighteen-pence because he tucked the blankets about a young prisoner who had been shivering in the draughts which blow about in a prison. The prisoner died a few days later."

of any kind. A child who has been crying all day long, and perhaps half the night, in a lonely dim-lit cell, and is preyed upon by terror, simply cannot eat food of this coarse, horrible kind."

APPENDIX B

THE INDETERMINATE SENTENCE (See CHAP. I, p. 25).

“THE Twenty-third Yearbook (for 1898) of the Elmira Reformatory is noteworthy as containing an appeal, in the Board of Managers’ Report, for an unconditional indeterminate sentence. The fact that detention is limited to the maximum sentence imposed by law induces the well-disposed criminals to qualify themselves for early discharge on parole, but it furnishes no inducement to the less well-disposed prisoners, who are aware that they must necessarily be set free on the expiry of the maximum term, and therefore make no effort to qualify themselves for the privileges of liberty. When the Reformatory was first established the indeterminate sentence was an experiment. ‘But during the life of this Reformatory,’ remark the Managers, ‘such change has occurred in public sentiment and in the laws of States and management of reformatory prisons, that, it is believed, the complete indeterminate system of sentence for crime may now be safely instituted.’ It is not necessary to guard against the hardship of unduly long imprisonment, for under the stimulus of the Refor-

matory system the average detention has been only two years and two months ; while prisoners sentenced to the ordinary prisons on a definite sentence for identical crimes remain, after deducing all possible abatement for 'good time,' quite four years."—(*The Criminal*, by Havelock Ellis, 3rd edn., p. 402.)

APPENDIX C

THE PROBATION SYSTEM

THE following are some extracts from a pamphlet by Miss E. P. Hughes¹ on this system as adopted in the United States :—

“ The Probation System may be briefly described as *an attempt to reform a prisoner outside prison*, in which a special kind of warder—the Probation Officer—supervises the prisoner in the prisoner’s own home.”

[The Judge may have power to sentence any prisoner to a term of “ Probation,” but especially children and youths under eighteen, and first offenders.]

“ I was told that six months was usually the minimum . . . a year appears now to be a common period . . . An officer generally has from sixty to eighty cases under his care. Women officers are in charge of women and of boys and girls under eighteen. A Probation officer has a special area of the town allotted to him, and usually gets all prisoners from that area. He has therefore an intimate knowledge of the physical, economic and social en-

¹ Issued by the Howard Association, London.

vironment in which his prisoner lives. . . . It is his duty to find out exactly why the prisoner has committed a crime, and remove all possible temptations out of his way ; it is his business to stand by his side and help him to become once more a decent citizen.

“ I was much struck with the relation between officer and prisoner. Strict rules were made, and had to be obeyed ; but the relation was most friendly and most human. . . . One woman officer, whom I knew, was accustomed to collect many of the young lads under her care to a weekly meeting for games, reading, etc. ; and I discovered that many of her visitors were lads who had formerly been under her care, and still wished to come.”

Miss Hughes found that Probation was largely resorted to in America for cases of drunkenness. Let me end, she says, with a quotation from a Boston Report on Probation :—“ Probation may be said to embody the most recent advances in penological thought and method. The archaic theory of punishment, which aimed primarily to take public and legal vengeance on the offender, in proportion to the magnitude of his offence, has proved indefensible in theory, impossible in practice, and demoralizing in its results. The purely deterrent theory of punishment which endeavoured primarily to ‘ make an example ’ of the offender . . . has also been fundamentally modified in theory and in practice. . . . To protect society, so far as possible by reformation ; to deter from crime by surrounding the offender with influences which moralize his purposes and strengthen his power of

self-control ; to resort to extreme forms of coercion and restraint only when the welfare of the individual and of society demand it ; this is the latest word of science and of morality in regard to the duty of society towards unfortunate or degraded members. There is no better justification of Probation than the embodiment of these ideals."

Mr. Charlton T. Lewis, President of the National Prison Association of the United States, said in an address to the Prison Congress at Hartford in September, 1899 :—

" Prison life is unnatural at best. Man is a social creature. Confinement tends to lower his consciousness of dignity and responsibility, to weaken the motives which govern his relation to the race, to impair the foundations of character and unfit him for independent life. To consign a man to prison is commonly to enrol him in the criminal class. . . . With all the solemnity and emphasis of which I am capable, I utter the profound conviction, after twenty years' constant study of our prison population, that more than nine-tenths of them ought never to have been confined."

Dr. James Devon, Medical-officer of Glasgow Prison, in an address¹ before the Royal Philosophical Society of Glasgow in 1904, said :—

" Perhaps in time we shall get rid of the superstition that institutions are necessarily good things, and be less ready to send prancing over the country, intelligent, zealous officials whose mission seems to be—to shut up every one who is a different kind of fool from themselves. Of course I do not suggest

¹ "The Treatment of the Criminal and Offender."

that all 'institutions' are useless and harmful ; some are not so bad as others ; but I think we could do without shutting up so many people who do not act just as we desire, if we would only be a little more reasonable than they are. . . ."

" If one half the ingenuity spent in leading some of them astray, and in oppressing them, were devoted to their reclamation, the results would amaze."

Also with regard to Prison-reform in detail, he says :—

" I suggest that better results could be obtained by—

" 1. Keeping as many *out* of prison and institutions as possible :

- (a) by an extension of the system of inflicting fines ;
- (b) by appointing guardians over culprits, who would undertake their supervision ;
- (c) by boarding out, where the character of the culprit would permit of that being done ;

" 2. Transforming prisons from places of detention merely, into Reformatories :

- (a) by approximating the conditions of life withinto those of family life outside ;
- (b) by the education of the criminal."

APPENDIX D

CORPORAL PUNISHMENT

WITH regard to Corporal punishment, I can quite understand a prisoner by way of relief from the intolerable monotony of the cell, or revolt from the pious ministrations of the Chaplain and lady-visitor, qualifying himself purposely (as I believe sometimes happens) for the "cat." I remember there used to be an assistant-master at a certain school, who boasted that he *never* caned the boys, and that he kept the class in perfect order without any cruelty. But on inquiry it was found that to punish a boy he kept him in and *lectured him* for an hour! It was of course only a more refined form of cruelty; the boy would much rather have been caned. A curious thing once happened to me. A young man of twenty-five or so, whom I knew very well, and who was in rather poor circumstances, was in the habit of getting badly drunk and terrifying his wife and children on those occasions, though at other times he was decently behaved. One evening, coming to the house I heard screams, and found

him in the said state, and threatening violence all round. Being incensed I seized a stick and quite deliberately gave him a really severe "waling"—so bad that he felt it for some days. For months after he was miraculously good! I followed up the lesson and the shock, by getting all sorts of helpful influences to bear on him, introducing him to new friends, etc. ; and for a couple of years or so he was, if not cured, decidedly improved. Then I lost sight of the family for some time. Later on, a year or two after, calling one afternoon I found the wife in tears. Her husband was drunk again, she said. Presently he came into the room, boosy, but not very drunk, and looking sheepish and ashamed. I spoke to him in a remonstrative but kind sort of way ; and then after a pause he said (addressing me by name) "Do you remember, once giving me a waling ?" "Oh, yes, I remember very well," I said. "Well," he replied, and in a kind of hoarse whisper, "*I wish you'd do it again.*"

Needless to say I did not accede to his request ; but one could not help feeling that that swift cudgelling, coming from some one he cared for, *had* probably helped him, and that he knew it. It had called together his disorganized nerve-centres and had produced a physiological effect upon him, as well as a mental effect.

Another master in a school, who was very averse to the cane, told me that one of his boys was so tiresome and annoying that at last on one occasion he was obliged to use it on him—which he did pretty roughly. The effect was magical. The boy not only improved immensely and permanently in

his work, but became greatly attached to him (the master) and one of his best pupils. Dr. Brockway, head of the Elmira Reformatory in New York State, seems to have regarded corporal punishment in somewhat the same light, not as retributive but as remedial, and possibly in a physical sense helping the patient to reorganize himself.¹

But it is obvious—whatever occasional instances there may be in which corporal punishment is useful—that from a moral point of view the appeal to physical pain is the lowest that can be made. Only when all higher appeals have failed can this lowest one be permissible—else the character will be pulled downwards, instead of being built up. And even so the infliction ought only to be in the hands of one whom the patient cannot help respecting, else there is always the danger that it will breed revenge and hatred instead of reform.

Needless to say that these considerations utterly bar the placing of the power of corporal punishment in the hands of magistrates, judges, and merely official persons. Only Heads of Reformatories, and such as have personal and enduring relations with those placed under them—who know the characters of the latter, and can command their respect—are fit to be entrusted with such power ; and then only towards young offenders ; since the flogging of elder and matured persons, besides being an outrage, cannot be remedial, and is necessarily of the nature of revenge, and calculated to breed revenge. As to the actual floggings with cat and birch in civil,

¹ See *The Criminal*, p. 394.

naval, and military prisons they are brutally severe, and can only be regarded as a survival of blood-thirsty and torture-delighting ages of human evolution.

APPENDIX E

CAPITAL PUNISHMENT

(See CHAP. I, p. 23)

*The case of Mary Ansell.*¹—“If any doubt still remains in the public mind as to the advisability of abolishing Capital Punishment, this case should remove it. The spectacle of a great nation—the greatest, in its own eyes, and most civilized on earth—standing by to witness the execution of a girl of twenty-two, whose diseased mind is sufficiently shown by the nature of the crime which she has committed, must give us pause. Is it really possible that we who boast of our enlightenment, our science, our boundless wealth and power, can find no better course than this?

“The sordid story of Mary Ansell explains itself only too well. She insured her imbecile sister for £22. Then she went out and bought some phosphor paste, such as you kill rats with, smeared some on a jam sandwich and sent it to her sister, that so by the latter’s death she might gain the paltry sum. There is no reason to doubt the evidence. ’Twas the meanest of crimes, and moreover it was such an one as could only be committed by a person ignorant to

¹ A letter reprinted from *Humanity* for September, 1899.

the last degree (since any one else would have known that detection was certain). Without any further evidence about the number of imbecile relatives in the Ansell family, the crime itself indicates a feeble brain, a paltry mind, and the power of affection apparently quite undeveloped—a nature in fact as near to imbecility as may be.

“ We can, in a way, understand a people putting to death some powerful traitor whose presence is a danger to the State ; but here there was no question of danger to the State, only of brutality exercised by the State. This great nation of ours, which, it must be said, daily and hourly commits and sanctifies similar crimes to that of Mary Ansell—which mows down with Maxim guns or poisons with strong drink whole races of defenceless folk, for monetary gain and the opening up of new markets—stood by to see the wretched girl who had followed its high example, hanged by the neck till she was dead. And it could not—this great nation which takes Bibles and brandy to the heathen—find in all its heart, all its human knowledge, all its wide experience, anything better to do with her. It could not see that the poor diseased brains, both of Mary and her victim, were the products in all probability of its own vile greed, in factory and slum, working all through our social conditions and condemning half the children of our cities beforehand to ill-health and ignorance. It did not, this great nation, feel strong enough to take the wretched woman into its keeping, and let the light into her brain, till she herself should realize, if she had not realized already, the horror and the retribution of her deed. No, it

almost seems that it was afraid of her—afraid of her crime, as it were too like the shadow of its own.

" It often happens on these occasions—as in this case of Mary Ansell, and in those numerous cases of infanticide of which a hundred or more are brought into court in England every year—that the jury, who actually see what kind of a human being the prisoner is, and the tragedy of the circumstances, are revolted at the thought of a death-sentence. But they are directed that they must find a verdict in accordance with the ' facts ' (which they think means that they must only take physical facts and not mental facts into account); so, even against their own better instinct, they pronounce the word *Guilty*. The judge of course understands the situation; but on the verdict he has no alternative but to award the extreme penalty; and so, he too, against his own good sense and in despite of whatever human feeling he may still have left in his heart, puts on the black cap. Finally, in a vast number of cases, the Home Secretary, seeing that if he give way once or twice he will have to give way continually, hardens his heart and entrenches himself behind the platitude that ' the law must take its course.' And thus we have the spectacle of a whole nation assisting at a brutal and demoralizing performance, of which it is heartily ashamed, and yet so paralyzed by stupidity and the cowardice of custom that it cannot even nerve itself to make a simple and obvious alteration in its statute-book.

" The abolition of the Death-penalty is the only

course open to any self-respecting nation at the present day ; because (among many other reasons) society has passed beyond its belief in Revenge ; and ' an eye for an eye, or a tooth for a tooth ' however appropriate a maxim for a barbaric age does *not* express our feeling on these matters now ; because we see that two wrongs do not make a Right, and that it is only feeble and childish to find no other way of expressing our disapproval of Murder than by committing another murder ; because we begin to understand the complexity of human motives and the subtle influence of environment and to realize the monstrosity of the death-sentence in a vast number of cases which technically are indistinguishable from wilful murder ; because it is senseless and outrageous to put the superhuman strain of sorting out those cases which *are* to be counted worthy of death from those which are not, on any one man—as on our Home Secretary in the present system ; because the dignity and greatness of National Life—if there is any dignity and greatness about it—turns instinctively away from the idea of using its enormous power to crush the individual that has sinned against it—however great the sin may be, or however perverted the individual ; and because, in view of the fact that Society is more or less responsible for the life and growth and conduct of all its children, Reform is and can be the only rational and practical object of punishment, combined with such dignified stringency as may distinctly mark society's disapproval of the crime."

The compulsion placed on the judge to pronounce

the death-sentence in every case where the verdict is "Murder," is very monstrous ; and the law in this respect ought to be altered without delay. It leads to all sorts of anomalies and absurdities. As a matter of fact the man convicted of murder (as hinted above, Chap. I.) is often one of the most reformable of criminals. If Capital Punishment had to be retained, it would be much more appropriate to confine it to hopeless recidivists, and those whose criminal propensities, if not so serious, have been proved to be entirely ineradicable. As it is, a verdict of murder may easily be a matter depending on the accuracy of a clock to a minute or so. In the case of poaching, for instance, the charge of poaching (which is a felony) can only be made if the offence has been committed at night, i.e. between 6 p.m. and 6 a.m. If the offence has been committed during the day, it only comes under the head of trespass after game. If during a poaching affray (at night) a man's gun accidentally goes off and kills a gamekeeper the offence is technically murder, because it is manslaughter committed in the course of a felony—and hundreds have been hanged for this. If on the other hand the same thing happens in the day, before six in the evening, it is an accident merely, and the man may have a light sentence for game-trespass, or escape with no punishment at all. That a mere question of Greenwich time should decide such an alternative as this seems too odious to be tolerated.

As regards the European nations, Capital Punishment has ceased or been abrogated : in Holland since

1870, in Finland since 1824, in Italy since 1879, in Switzerland since 1874, in Belgium since 1863, and lately in Portugal and Roumania. While in most of, if not all, these cases the number of murders committed has decreased instead of increased—showing that as a deterrent this form of punishment has not been effective. (See pamphlet on *Capital Punishment*, by E. D. Girdlestone, *New Age* Press, 1904.)

APPENDIX F

THE TREATMENT OF UNCONVICTED PRISONERS

THE treatment of prisoners on Remand or awaiting trial is still very unsatisfactory, and though official attention has been frequently called to this matter, little or nothing has been done.

The Report of 1895 quotes with approval the Prison Act of 1877—which declares that these prisoners are confined for safe custody only, and that special rules are to be made “ regulating their confinement in such manner as to make it as little as possible oppressive, due regard only being had to their safe custody ” ; but it goes on to say that this provision has never been adequately carried out. In fact unconvicted prisoners are treated but little better than the convicted.¹ They are in solitary confinement almost all the twenty-four hours ; their food is, not the lowest, but a low scale of prison diet ; they have only scant opportunities of exercise, or of seeing their friends ; and none at all of conversing with fellow prisoners

¹ The Prison Act of 1898 does nothing for them.

awaiting trial. It is obvious how monstrously hard and oppressive this is—especially upon the poor man. Our law is supposed to treat every accused person as innocent until he or she is proved guilty. But the accused, who are not on bail, are actually subjected to little short of the rigours of ordinary imprisonment. Of course if a man is well off he not only has a good chance of getting bail, but he can be supplied with good food by his friends, and can see his solicitor freely and arrange about his defence ; even then the solitude and confinement and anxiety may be bad enough ; but a poor man, nearly starved on the prison fare, and unable to employ a solicitor, is in no condition to get up any kind of defence, and easily succumbs to the carefully-prepared evidence against him, however false it may be. “Criminal cases,” says the *Saturday Review*,¹ “are constantly disposed of at Sessions and Assizes in the most hasty and perfunctory manner, the undefended prisoner scarcely realizing the nature of the charge or the bearing of the evidence. How can a prisoner, semi-illiterate and with no writing-materials or aids to memory, be expected to keep in clear order in his mind the evidence of half-a-dozen witnesses so as to deal with them all when, dazed and bewildered, he is told at the last that he may address the jury ? In the case of a very large number of undefended prisoners it is not too much to say that they are daily being sent to long terms of imprisonment or penal servitude on what is little more than the report of a police-constable.”

¹ July 31, 1897.

The case of Mr. X. last year (1904), who was falsely accused of fraud, supplies an example. Being unable to produce the large bail required, he was taken to Brixton Gaol, where he was stripped, bathed, and put into a prison suit. Impressions of his palms and fingers were also taken. The jury awarded him £850 damages for false imprisonment and added to their verdict a rider drawing attention "to the unjustifiable manner in which the plaintiff, a respectable tradesman, was treated at the Brixton Prison when on remand." Mr. Justice Jelf also, in January, 1905, made some very strong remarks on a similar case that came before him. Mrs. Maybrick, waiting for the coroner's inquest, was taken to the county police station, Lark Lane, Liverpool. "I passed the night in a cell which contained only a plank as a bed. It was dark, damp, dirty and horrible. A policeman, taking pity on me, brought me a blanket to lie on. In the adjoining cell in a state of intoxication, two men were raving and cursing throughout the night. I had no light—there was no one to speak to. I was kept there three days, until the coroner's jury had returned their verdict. (*Own Story*, p. 38.)

It is clear that short of allowing unconvicted prisoners to escape they ought to have every privilege in the way of things necessary to keep them bodily and mentally in good condition—and free of cost to themselves. They ought also to be allowed to confer with fellow-prisoners concerned in the same case—with regard to their defence—though necessarily in the presence of a warder. These changes, and others, have been crying for attention for years;

public opinion has recognized the need of them; the Prison Act of 1877, as pointed out, recommended them; and yet we are still waiting for officialism to move.

APPENDIX G

A COURT OF CRIMINAL APPEAL

FROM various sides to-day there is a demand for the establishment of a Court of Criminal Appeal ; and recent cases of miscarriage of justice have brought the demand into prominence.

While in civil cases appeal can be had to a higher tribunal, in criminal matters the first decision is conclusive ; and the prisoner knows, whatever mistake has been made, that there is no remedy for him. The Court for Crown Cases Reserved can hear certain appeals on points of law (but not of fact), and these only when the Judge is willing to state a case ; and in practice the Court is rarely used. As to the Home Office, it is not a court of appeal at all, and has no power to quash a conviction, but only to grant or refuse the King's pardon. It may move on receipt of a petition from the prisoner, but of course rarely does so ; and when it does, its delays are heart-breaking. All its investigations are in secret, and a prisoner never knows what statements may be made against him, nor has any opportunity of refuting them.

It is one of the humours of the law that there are many cases which can be tried in *either* a civil court or a criminal court. If tried in the former there is full liberty of appeal ; if in the latter there is none !

In the civil courts property is the main subject of dispute, and it looks as if property was considered so much more important than personal offence or injury that justice was specially guarded in relation to its rights !¹ It appears that England is the only Western nation without a Court of Criminal Appeal.

A Court of this kind ought to be established at an early date to which recourse could be had on the same grounds usual in civil actions—namely, (1) verdict against weight of evidence, (2) misdirection of the jury by the judge, and (3), wrongful admission, or rejection of evidence—with of course reasonable safeguards against abuse. A bill for this purpose introduced in the House of Commons a few years ago by Lord James of Hereford and others was dropped owing to Dissolution of Parliament.

With regard to the Beck case in 1904, the Committee of Inquiry then appointed criticized the methods and action of the Home Office pretty severely ; but in the matter of external reform they limited themselves to extending the power of the Court for Crown Cases Reserved, and did not venture so far as a Court of Criminal Appeal ! They said “ In our opinion the miscarriage in this particular

¹ “ Is it not the climax of injustice,” says Mrs. Maybrick (*Own Story*, p. 149) “ that men and women if sued for money, even for a few shillings, can appeal from court to court—even to the House of Lords, the English court of last resort ; but when character, all that life holds dear, and life itself are in jeopardy, a prisoner’s fate may depend upon the incompetent construction of one man, and there is no appeal ? ”

case could never have gone without remedy if the learned Judge had seen fit to state a case for the consideration of the Court for Crown Cases Reserved, on the point raised by Mr. Gill. We cannot doubt that if the matter could have been brought before that Court the flaw in the proceedings would have been judicially ascertained and the conviction quashed. A very simple change in the law would suffice to secure a review by the Court of every alleged mistake in law, which could be reasonably supposed to have led to a miscarriage. There is at the present time no means of compelling a judge to state a case if he declines to do so. It would be a very simple matter to provide that on motion to the Court on good *prima facie* grounds it should have power to grant a rule calling upon the Crown to support the ruling impugned." That is, the Committee suggests that on reasonable petition or other motion to the Court, the Court itself should have power to deal with the matter, and should not be dependent on the willingness of the judge to state a case.

This suggestion of the Committee is valuable, and it may be hoped that it will be attended to. But since the Court of Crown Cases Reserved anyhow only deals with mistakes of law, and not with mistakes of evidence or matters of fact, it is clear that a Court of Criminal Appeal, on the lines above-mentioned, is also indispensably needed.

THE END.

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